

UNITED NATIONS
General Assembly
FIFTIETH SESSION
Official Records

SIXTH COMMITTEE
35th meeting
held on
Thursday, 9 November 1995
at 3 p.m.
New York

SUMMARY RECORD OF THE 35th MEETING

Chairman: Mr. BELLOUKI (Morocco)
(Vice-Chairman)

later: Mr. LEHMANN (Denmark)
(Chairman)

CONTENTS

AGENDA ITEM 145: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

AGENDA ITEM 143: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-EIGHTH SESSION (continued)

AGENDA ITEM 147: CONSIDERATION OF THE DRAFT ARTICLES ON THE STATUS OF THE DIPLOMATIC COURIER AND THE DIPLOMATIC BAG NOT ACCOMPANIED BY DIPLOMATIC COURIER AND OF THE DRAFT OPTIONAL PROTOCOLS THERETO (continued)

AGENDA ITEM 148: REVIEW OF THE PROCEDURE PROVIDED FOR UNDER ARTICLE 11 OF THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned within one week of the date of the publication to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/50/SR.35
12 December 1995
ENGLISH
ORIGINAL: FRENCH

95-82161 (E)



In the absence of Mr. Lehmann (Denmark), Mr. Bellouki (Morocco),
Vice-Chairman, took the Chair.

The meeting was called to order at 3.20 p.m.

AGENDA ITEM 145: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)
(A/50/33, 361 and 403)

1. Mr. MADEJ (Poland) said that he would limit his comments to chapter VI of the Special Committee's report (A/50/33), which dealt with the question of the deletion of the "enemy State" clauses of the Charter. Considering that the time had come to remove those clauses that were directly linked with the Second World War and had become obsolete, his delegation, which had initiated the resolution that the General Assembly had adopted on the subject at its forty-ninth session, hoped that the Assembly would express its intention to initiate the procedure set out in Article 108 of the Charter. While acknowledging that it was up to the Assembly to decide which of its future sessions would be the most appropriate, his delegation considered that the amendments to the Charter should be made as soon as possible.

2. Mr. ERDOS (Hungary) said that his delegation attached great importance to the enhancement of cooperation between the United Nations and the Organization for Security and Cooperation in Europe (OSCE), which would greatly contribute to the implementation of the objectives of the United Nations.

3. His delegation had many reasons to follow with interest the consideration of the question of assistance to third States affected by the application of sanctions under Chapter VII of the Charter. Those sanctions, in particular those that had been imposed against the Federal Republic of Yugoslavia (Serbia and Montenegro), had caused considerable damage to the Hungarian economy, not only as a result of the sanctions regime per se but also as a result of the disruption of transit lines. It was therefore not surprising that Hungary, one of the most seriously affected countries in the region, was dissatisfied with the current implementation of Article 50 of the Charter. Moreover, even if that Article were fully implemented, it would not be enough to alleviate the burdens encountered by the countries concerned.

4. Hungary was fully aware of the difficulty of striking a proper balance between international legality and the responsibilities of the Security Council and the legitimate concerns of third States that made requests for formal assistance on the basis of Article 50 of the Charter. In spite of the efforts of the working group responsible for considering the matter, the positions of delegations were still quite far apart. However, the proposal made by the European Union provided a good basis for reaching an agreement.

5. His delegation supported the adoption of the draft United Nations Model Rules for the Conciliation of Disputes between States, which it considered to be a reasonably flexible instrument that took into account the provisions that already existed in other multilateral instruments in that field.

6. His delegation fully endorsed the Special Committee's recommendation concerning the deletion of the "enemy State" clauses in the Charter of the United Nations, since the States against which those provisions had been directed had become full-fledged Members of the United Nations a long time ago and were a great asset to all the efforts of the Organization.
7. The Special Committee should be open to all States Members of the United Nations and should continue to operate on the basis of consensus. For the past few years, the Special Committee had been giving ample opportunity to States that were not members of the Committee to participate fully in its proceedings as observers. While his delegation was not completely convinced that the proposed formula would promote efficiency, it was ready to join in a consensus, provided that the conversion of the Special Committee into an open-ended body was not construed as a precedent for other subsidiary organs of the General Assembly or other main organs of the United Nations.
8. Mr. HAFNER (Austria) said that, in order to avoid duplication of work, the consideration of the question of the maintenance of international peace and security should be seen in the context of the ongoing discussions in other United Nations bodies. The question could therefore be raised whether or not the Special Committee was the appropriate body for discussing the proposals put forward under that topic.
9. While the draft United Nations Model Rules for the Conciliation of Disputes between States could be submitted to the General Assembly for adoption in their current form, his delegation was convinced that the draft could be further improved. For example, the draft Model Rules did not specify the basis of the findings of the conciliation commission. It was therefore unclear whether the commission should be called upon to find a solution acceptable to the parties to the dispute or one that was based on law, equity and justice. The answer was important since, if the parties were to have confidence in the commission's recommendations, such recommendations should be based on certain established standards. Moreover, in addition to the many existing instruments for the peaceful settlement of disputes, the text could contribute to the further fragmentation of international law. However, the establishment of a judicial body to take decisions in all kinds of disputes was still a very distant reality. Since the advantages of the draft outweighed its possible shortcomings, his delegation supported its adoption.
10. The proposal made by Sierra Leone, entitled "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes" (A/50/403, annex), merited further study. His delegation thanked Sierra Leone for its explanatory document, but noted that certain additional clarifications were still required, in particular with regard to the Board of Administrators, the role of the Security Council and the mechanism's relation to the United Nations.
11. In view of the fundamental changes that had occurred in the world, the initiative taken by Poland to delete the "enemy State" clauses in the Charter was to be welcomed, even if the rule cessante ratiōne lex ipse cessat could no doubt be invoked. However, it would be better not to consider that question in isolation and to include it in the process of reforming the Charter.

12. While his delegation welcomed the recommendation to enlarge the Special Committee (A/50/33, para. 67), it noted that the recommendation only formalized a practice that already existed since, for the past several years, States requesting to participate in the proceedings of the Special Committee had been granted observer status.

13. Mr. CHOE Tong U (Democratic People's Republic of Korea) said that the "enemy State" clauses could not be considered obsolete simply because 50 years had passed since the adoption of the Charter and great changes had taken place in the world. The validity of the clauses was indisputable; Japan, which had been responsible for indescribable suffering and crimes against humanity, after half a century had still not liquidated its odious past. Japan was doing everything it could to cast off the "enemy State" label and become a member of the Security Council.

14. Japan had colonized Korea for more than 40 years and, to that end, had not hesitated to forge international documents. During the Second World War, it had forcibly drafted more than six million people, one million of whom had died, and had taken away 200,000 Korean teenage girls as sex slaves for its soldiers. However, it persisted in denying all responsibility for those atrocities.

15. The Japanese Government was being accommodated because it made a large contribution to the Organization. However, money could not be allowed to decide everything, at the risk of nullifying the efforts made for 50 years to promote justice and equity. Japan's supporters alleged that the position of the Democratic People's Republic of Korea was the expression of an anti-Japanese feeling which was deeply rooted in the population, but that was not true. The deletion of the "enemy State" clauses was a fundamental issue with implications for international peace and security.

16. If Japan wished to regain the confidence of the Asian peoples in general and the Korean people in particular it must liquidate its criminal past as soon as possible. His delegation believed that, unlike Japan, the other "enemy States", including Germany, had made honourable amends. It therefore suggested that the Charter should be revised in such a manner as to apply the "enemy State" clauses only to Japan, on an interim basis, until Japan admitted its wrongdoing and liquidated its past.

17. Mr. AYEWAH (Nigeria) said that the fiftieth anniversary of the United Nations was a time to review the Organization's work and prepare for the future. In particular, as noted by the Secretary-General in his report on the work of the Organization (A/50/1), a more dynamic relationship should be achieved between the General Assembly, the Security Council and the Economic and Social Council; there was no doubt that the Special Committee could play a significant role in that process.

18. While the Special Committee had made a substantial contribution towards the efforts to promote peace, it had shied away from pursuing the development objectives laid down in the Charter. His delegation hoped that over the next few years, the Special Committee would contribute to the strengthening of cooperation between the General Assembly, the Security Council and the Economic and Social Council, as provided for in the Charter. It drew attention to

Article 58 of the Charter concerning the specialized agencies and Article 63 concerning the activities of the Economic and Social Council.

19. On the question of the membership of the Special Committee, his delegation supported the Special Committee's recommendation in paragraph 67 of its report (A/50/33) that it should henceforth be open to all States Members of the United Nations. His delegation also supported the draft resolution calling for the deletion of the "enemy State" clauses from the Charter.

20. His delegation welcomed the Secretary-General's report on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter (A/50/361), and the establishment of a working group on the subject. Sanctions should not be regarded as punitive measures, but instead as coercive measures, to be imposed with care. Machinery should therefore be established to respond to requests for assistance by third States, and a trust fund should be set up.

21. The revised proposal submitted by the Libyan Arab Jamahiriya and the working paper submitted by Cuba concerning the strengthening of the role of the Organization in the maintenance of international peace and security provided interesting perspectives and should be taken up by the Special Committee at its next session. His delegation also welcomed the draft United Nations Model Rules for the Conciliation of Disputes between States submitted by Guatemala. The text could make an important contribution to strengthening the mechanism for the prevention and peaceful settlement of disputes.

22. Mr. SRIWIDJAJA (Indonesia) said that the profound changes in the international scene and the increasingly important position of the Security Council made it imperative to undertake a review of the Council's membership in order to respond to the great increase in the number of Member States and accommodate the interests of the majority of Member States, especially the developing countries. Moreover, the use of the veto must be limited so as to democratize the work of the Council.

23. With regard to the repercussions of sanctions on third countries, it should be stressed that the expanding use of sanctions had not been accompanied by consideration of their short and long-term effects. The direct impact of sanctions was on the most vulnerable segment of the population, particularly innocent women and children. It was not acceptable for sanctions to be prolonged for political motives: sanctions must be lifted as soon as the objectives sought were accomplished. It would be useful to establish a sanctions mechanism, as proposed by the Secretary-General in the supplement to the agenda for peace (S/1995/1). His delegation was prepared to cooperate in the efforts of the working group on the question and hoped that the draft resolution submitted to the General Assembly at the current session would be adopted by consensus.

24. The revised proposal submitted by the Libyan Arab Jamahiriya and the working paper submitted by Cuba on the strengthening of the role of the United Nations in the maintenance of international peace and security contained many useful proposals. His delegation also appreciated the text of the draft United

Nations Model Rules for the Conciliation of Disputes between States, submitted by Guatemala.

25. The fiftieth anniversary of the United Nations provided an opportunity to enhance the role of the United Nations in the maintenance of international peace and security, the promotion of economic and social development and the quest for better understanding among peoples, as noted by the President of Indonesia at the special commemorative meeting in October 1995.

26. Ms. BETANCOURT (Venezuela) said that the question of the effects on third countries of sanctions imposed by the Security Council was all the more important as those sanctions became numerous. That was why Venezuela welcomed the ideas expressed on the matter by the Secretary-General in his report (A/50/361). She agreed that consideration should be given to setting up an official mechanism to deal with the indirect effects of sanctions. Such a mechanism should be practical and effective, and should be founded on two principles: the need to address situations promptly and the need to find a rapid and equitable solution. The international financial institutions should also be involved in its operations, which would make it even more useful. It would be timely, therefore, for the Special Committee to pursue its analysis and consideration of all aspects of the matter in 1996.

27. As to the peaceful settlement of disputes between States, the new draft Model Rules approved by the Special Committee and submitted to the General Assembly for consideration could provide useful guidance without being binding, although they could be used provided that the States concerned agreed. If adopted, the document could be made an annex to the Handbook on the Peaceful Settlement of Disputes between States published recently by the United Nations. On the other hand, the proposal of Sierra Leone to establish a rapid intervention service in the event of a dispute, while interesting, should be given more careful consideration, particularly from the standpoint of State sovereignty and of the advantages it would bring for the international community.

28. Poland had proposed deleting from the Charter Articles 53, 77 and 107, which spoke of "enemy States", and her delegation continued to favour that initiative because the provisions in question were both obsolete and inapplicable. That having been said, however, any amendment of the Charter should be made in accordance with the procedures established in that instrument.

29. With regard to the composition of the Special Committee and the proposal submitted in that connection in paragraph 67 of the report, her delegation was in favour of enlarging it to all States Members of the Organization.

30. Ms. WILMSHURST (United Kingdom) welcomed the preparation by the Special Committee of the draft United Nations Model Rules for the Conciliation of Disputes between States and thanked the delegation of Guatemala for its important contribution in that regard. She also expressed approval for the draft resolution on the deletion of clauses in the Charter of the United Nations referring to "enemy States". The manner and the timing envisaged for the deletion were both satisfactory, and it was to be hoped that the draft

/...

resolution, which had been the subject of long and sensitive negotiations, would be adopted by consensus.

31. As to the question of third States affected by sanctions imposed under Chapter VII of the Charter, her delegation associated itself fully with the statement made by the representative of Spain on behalf of the European Union. Careful consideration should be given to the observations made at the previous meeting by the representative of France on the way to achieve a fruitful consensus.
32. The United Kingdom was ready to accept that all Members State should be authorized to participate in the work of the Special Committee and that the Special Committee should continue to take its decisions on the basis of consensus. In addition, the United Kingdom would like the Special Committee to consider the matter of continuing the preparation and publication of the supplements to the Repertory of the Practice of the Security Council and the Repertory of Practice of United Nations Organs, which were extremely valuable research tools. In spite of General Assembly resolutions 35/164 and 36/123, the preparation of both series had fallen behind, and it might be useful if the Special Committee and the Sixth Committee looked at the matter. For that purpose, the Committee might, in the resolution it adopted on the Special Committee, request the Secretary-General to inform it of the current status of the two series.
33. As for the proposal for a dispute settlement service outlined in paragraph 56 of the Special Committee's report, her delegation was not convinced of the need for yet another mechanism for the settlement of disputes.
34. Finally, she expressed doubts as to the usefulness of the Special Committee's general debate. There was always a danger that it repeated what was said in the debate in the Sixth Committee or in the debates on individual agenda items in the Special Committee itself. It might be useful for delegations to consult informally as to whether that practice should be maintained.
35. Mr. KOLOMA (Mozambique) recalled document A/AC.182/L.79, concerning the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII, which had been submitted to the Special Committee the year before by a number of countries, including Mozambique.
36. Referring to the report submitted on the same subject by the Secretary-General (A/50/361), he welcomed the establishment within the framework of the Sixth Committee of an open-ended working group charged with finding a solution to the problems posed on the basis of the Secretary-General's report. He also welcomed the measures proposed in the report, on which he made some general observations.
37. The most important of the proposed measures was the establishment of a trust fund, which should be permanent and supplied through both assessed and voluntary contributions. Sanctions were in fact a collective measure taken in the interest of the international community as a whole, and it would be normal for that community to assist the third States most affected to bear the burden

of them. Mozambique had not forgotten the severe economic losses it had suffered in the early years of its independence as a result of the sanctions imposed against Rhodesia. The establishment of a trust fund would strengthen the sanctions regime because it would encourage third States most affected by the repercussions of the sanctions to apply them.

38. Turning to the restructuring and revitalization of the United Nations, he welcomed the establishment by the General Assembly of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council. On the occasion of the fiftieth anniversary of the Organization, historic developments and the ending of the cold war made such a reform imperative, and it was necessary to ensure equitable geographical distribution which would offer permanent seats to the developing countries, particularly those from Africa. There was also a need to reform the working methods of the Security Council in order to make them more transparent and more democratic.

39. The revised working paper submitted by Cuba (A/AC.182/1995/CRP.1) contained valuable ideas which deserved attention from the Special Committee and from all groups working for the restructuring and revitalization of the United Nations system. His delegation therefore regretted that the Special Committee had not been able to consider it during its most recent session, and hoped that it would do so during its next session.

40. With regard to the deletion of the "enemy state" clauses from the Charter, he fully supported the course of action proposed by the Special Committee. However, he associated himself with those delegations which held that deletion should be decided as part of the process of reforming the Charter currently being considered by the General Assembly.

41. His delegation also approved the recommendation to the General Assembly that the Special Committee should in the future be open to all States Members of the Organization. However, Mozambique wished to draw attention to the need for consistency in approaching identical situations arising in other subsidiary organs of the General Assembly.

42. Last, he approved the recommendation that the General Assembly should bring to the attention of States the draft United Nations Model Rules for the Conciliation of Disputes between States by annexing it to a decision or resolution that it would adopt at its fiftieth session.

43. Ms. ELLIOTT (Guyana) said, concerning the repercussions of Security Council sanctions on third States, that a way must be found to have adequate consultations between the Security Council and the affected States and that consideration should be given to establishing a United Nations-administered trust fund to address the question of compensation.

44. Regarding the peaceful settlement of disputes, there should be further exploration of ways of making full use of the possibilities provided by Article 33 of the Charter, especially a greater reliance on the International Court of Justice to settle legal disputes.

45. As a small State, Guyana attached the highest importance to the cardinal Charter principle of the sovereign equality of nations, and urged that the composition of the Security Council should fully reflect that principle and also the growth in the membership of the Organization over the past three decades. While a possible increase in the number of permanent members of the Council should not be ruled out, the first priority should be to expand the non-permanent membership in keeping with equitable geographical distribution.

46. There was no doubt about the continuing importance of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, even if the recent establishment of several working groups to deal with reform and restructuring issues appeared to impinge on its mandate. Perhaps the time had come to begin to rationalize its work accordingly, avoiding duplication with those working groups and bearing in mind that the Special Committee could usefully complement work being done elsewhere by considering various proposals for reform in greater detail. Given the growing interest of delegations in the functions of the Special Committee, the idea of making it an open-ended body should be explored; that was something which could be accomplished by a simple resolution of the General Assembly.

47. Mr. ROGACHEV (Russian Federation) underscored the importance of the question of assistance to third States affected by the application of sanctions under Chapter VII of the Charter. The Security Council was, in fact, resorting with increasing frequency to sanctions, which were increasingly harsh and could become a destabilizing factor in international relations, given their growing impact on third States. The Security Council must bear that in mind, without, however, relinquishing any of its capacity to act freely, rapidly and effectively. It was a question of finding a balance between the two aspects.

48. The Special Committee's work provided a good basis for consideration of the question. His delegation would like to see the adoption of a definite mechanism for consultations with the third States concerned. It was indispensable to agree, even before the sanctions entered into force, on assistance that might be given to them. Such consultations should continue throughout the entire time that the sanctions were in place in order to avoid unforeseen developments. That would make for greater confidence in the sanctions regime, which should be perceived as a means of applying pressure on Governments and not as punishment of law-abiding States.

49. The adoption of a system of compensation presupposed an established method for assessing the impact of sanctions on third States. Such assessments had to be based on reliable information whose impartiality could be guaranteed by the Secretary-General. The Secretary-General could also, at the request of the Security Council and its subsidiary organs, provide other information regarding the adverse effects of sanctions. Also, such a method of assessment would be elaborated as an addition to the measures proposed by the Secretary-General for increasing the effectiveness and transparency of the Security Council and the sanctions committees. In that connection, the Russian Federation supported the proposal to establish guidelines for reviewing requests for assistance from third States affected by sanctions.

50. If such measures were put into effect, the capabilities of the Secretariat

would have to be increased, within existing resources. The question also had interrelated economic, political and legal aspects that the Special Committee should continue to consider.

51. Lastly, his delegation supported the recommendation that the General Assembly should bring the text of the United Nations Model Rules for the Conciliation of Disputes between States to the attention of States as well as the recommendation that the "enemy State" clauses of the Charter should be deleted.

52. Ms. GOLAN (Israel) welcomed the Special Committee's decision to open its membership to all Member States wishing to participate, which could only enhance the quality of its work and its deliberations.

53. On the question of the peaceful settlement of disputes, she noted with satisfaction the progress made by the Special Committee since 1994 in its consideration of the draft United Nations Model Rules. She welcomed in particular the deletion of article 8 of the original text, and the improvements made in other articles, such as article 13, paragraph 2, and article 14. Flexible, non-binding model rules would be a useful complement to existing dispute settlement arrangements.

54. The issue of the deletion of the "enemy State" clauses of the Charter should not be taken separately but should be viewed as an integral part of the broader process of revision of the Charter in which the General Assembly was currently engaged.

55. The principles of the sovereign equality of States and the universality of the United Nations, which were crucial to the achievement of the goals of the United Nations, the enhancement of cooperation among Member States and the strengthening of international peace and security, had not yet been fully implemented, as far as Israel was concerned, within the United Nations system, where elections were generally based on geographical distribution in accordance with quotas allocated to every regional group. Since Israel had for so many years been prevented from being a member of a regional group, it was unable to enjoy its full rights and assume all its duties as a Member of the Organization. The fiftieth anniversary of the United Nations provided an opportunity to review the United Nations system in that respect. The Special Committee should in the light of those two principles consider the possibility of establishing alternative systems that would ensure truly universal representation in United Nations organs and bodies.

56. Mr. KANEHARA (Japan), speaking in exercise of the right of reply, said that since the founding of the Organization 50 years previously, many States which shared the ideals of the United Nations and were desirous of contributing to the realization of its objectives had become Members of the Organization, including the so-called "enemy States". Significant progress had been achieved through international cooperation carried out under the auspices of the Organization and, in that connection, the Japanese delegation welcomed the Special Committee's conclusion that the so called "enemy State" clauses had become obsolete. It reserved the right to return to the subject at the appropriate time.

/...

57. Mr. CHOE Tong U (Democratic People's Republic of Korea) said that Japan was seeking by every means to divert the attention of international public opinion from its past crimes and to escape its responsibility. It called for mutual trust, but it was not possible to trust a country which refused to acknowledge the crimes it had committed. The Korean people, in the north, in the south and overseas, and the rest of the world would never forgive Japan for the heinous crimes it had committed against humanity, unless that country offered an official apology and fully compensated its victims. It was surprising that, while the Sixth Committee was engaged in a lengthy consideration of the question of the establishment of an international criminal court, the Special Committee should currently be considering the question of the deletion of the "enemy State" clauses. The Democratic People's Republic of Korea was firmly opposed to the adoption of the resolution on that subject and would maintain that position until such time as Japan liquidated its past crimes.

58. Mr. Lehmann (Denmark) took the Chair.

59. Mr. KANEHARA (Japan), speaking in exercise of the right of reply, said that his delegation had clearly stated its position on the deletion of the so-called "enemy State" clauses and reserved the right to return to the subject at the appropriate time.

60. Mr. Han Taek LIM (Republic of Korea), speaking in exercise of the right of reply, said that no foreign country could purport to state the position of his country on the subject of the deletion of the "enemy State" clauses, as the representative of the Democratic People's Republic of Korea had done. His delegation reserved the right to return to the subject at the appropriate time.

61. Mr. CHOE Tong U (Democratic People's Republic of Korea), speaking in exercise of the right of reply, said that the South Korean representative should have been ashamed to make statements such as the one he had just made before the Committee.

62. Mr. Han Taek LIM (Republic of Korea), speaking in exercise of the right of reply, said that he would proceed no further in that discussion without instructions from his Government. He wished to reiterate that his delegation reserved the right to return, if necessary, to the subject.

63. Mr. CHOE Tong U (Democratic People's Republic of Korea) said that he wished to make it clear that he had in no way claimed to be speaking for the Government of South Korea. He had merely expressed a sentiment which was shared by the entire Korean people, in the north, in the south and overseas.

AGENDA ITEM 143: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-EIGHTH SESSION (continued) (A/C.6/50/L.4 and L.5)

64. Mr. HAFNER (Austria), introducing draft resolutions A/C.6/50/L.4 and L.5 on the report of the United Nations Commission on International Trade Law on the work of its twenty-eighth session, said that Albania, Azerbaijan, Bulgaria, Cyprus, France, India, Myanmar and Thailand had joined the sponsors of the first draft resolution and that France and Thailand had joined the sponsors of the second.

/...

65. Introducing first draft resolution A/C.6/50/L.4, he said that the text followed the traditional patterns of previous texts which had been adopted on the same subject. He highlighted the main points of the draft resolution and its principal objectives.

66. Turning to draft resolution A/C.6/50/L.5, which concerned the draft United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, he drew attention to the significance of the text elaborated by UNCITRAL in a field in which the lack of uniform and harmonized rules obstructed the smooth process of international trade and led to certain abusive practices. It had taken UNCITRAL 11 sessions to prepare a draft text, which merited the broadest support, since all States had had an opportunity to take part in its elaboration.

67. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt draft resolution A/C.6/50/L.4 without a vote.

68. Draft resolution A/C.6/50/L.4 was adopted without a vote.

69. Mr. ROGACHEV (Russian Federation) expressed satisfaction at the results achieved by UNCITRAL and at the important contribution which the Commission was making to the development of international law. Having said that, he considered that the draft resolution just adopted failed to take sufficient account of the situation of countries with economies in transition which were in the process of reforming their legislation, and that the paragraphs which dealt with technical assistance did not devote sufficient attention to them. It was regrettable that the Russian Federation's proposals on the subject had been rejected.

70. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt draft resolution A/C.6/50/L.5 without a vote.

71. Draft resolution A/C.6/50/L.5 was adopted without a vote.

72. The CHAIRMAN said that the Committee had thus concluded its consideration of agenda item 143.

AGENDA ITEM 147: CONSIDERATION OF THE DRAFT ARTICLES ON THE STATUS OF THE DIPLOMATIC COURIER AND THE DIPLOMATIC BAG NOT ACCOMPANIED BY DIPLOMATIC COURIER AND OF THE DRAFT OPTIONAL PROTOCOLS THERETO (continued) (A/C.6/50/L.2)

73. The CHAIRMAN, introducing draft decision A/C.6/50/L.2 proposed by the Chairman, said that item 147 had been included in the agenda for years without any progress ever having been achieved. Considering that it would be more useful for the Committee to devote its attention to fields in which it was likely to develop international law, he proposed in the draft decision before the Committee to invite the General Assembly to bring the draft articles prepared by the International Law Commission to the attention of Member States and to remind them of the possibility that that field of international law might be subject to codification at an appropriate time in the future.

74. If he heard no objection, he would take it that the Committee wished to adopt the draft decision without a vote.

75. Draft decision A/C.6/50/L.2 was adopted without a vote.

76. The CHAIRMAN said that the Committee had thus concluded its consideration of agenda item 147.

AGENDA ITEM 148: REVIEW OF THE PROCEDURE PROVIDED FOR UNDER ARTICLE 11 OF THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS (continued)
(A/C.6/50/L.3)

77. The CHAIRMAN, introducing draft resolution A/C.6/50/L.3 proposed by the Chairman, recalled that the procedure provided for under article 11 of the statute of the Administrative Tribunal of the United Nations had not proved to be a constructive or useful element in the adjudication of staff disputes within the Organization. The purpose of the draft resolution was to delete that article.

78. If he heard no objection, he would take it that the Committee wished to adopt the draft resolution without a vote.

79. Draft resolution A/C.6/50/L.3 was adopted without a vote.

80. The CHAIRMAN said that the Committee had thus completed its consideration of agenda item 148.

The meeting rose at 5.50 p.m.

UNITED NATIONS
General Assembly
FIFTIETH SESSION
Official Records

SIXTH COMMITTEE
36th meeting
held on
Friday, 10 November 1995
at 10 a.m.
New York

SUMMARY RECORD OF THE 36th MEETING

Chairman: Mr. LEHMANN (Denmark)

CONTENTS

AGENDA ITEM 145: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

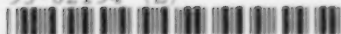
This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned within one week of the date of the publication to the Chief of the Official Records Editing Section, room DC2-744, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/50/SR.36
28 November 1995

ORIGINAL: ENGLISH

95-82194 (E)



/...

The meeting was called to order at 10.25 a.m.

AGENDA ITEM 145: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)
(A/50/33, A/50/361 and A/50/403)

1. Mr. OBEIDAT (Jordan) said that, in view of the world's economic interdependence, attention should be focused on ensuring that sanctions imposed by the Security Council affected only the target party and were fully and promptly lifted as soon as there was justification for doing so. Article 50 of the Charter of the United Nations had been drafted in recognition of the fact that the imposition of economic sanctions under Chapter VII would place third States in economic difficulty. Accordingly, Articles 49 and 50 should be no less mandatory in nature than the other Articles contained in Chapter VII.
2. The suffering of third States should also be viewed in the wider context of the restructuring of the United Nations, specifically in terms of increasing the membership of the Security Council, ensuring the transparency of the procedures of United Nations bodies and addressing the suffering of third States through permanent guidelines intended for the Security Council and the international community. He emphasized the important role the Economic and Social Council and the General Assembly should play in minimizing the effect of sanctions on third States and welcomed the proposals contained in paragraphs 9 and 39 of the Secretary-General's report on the subject (A/50/361), which held the keys to a radical solution to the problem that should be further developed.
3. He welcomed the establishment of the informal working group and the contribution made to its work by the European Union. There was a need for practical solutions to the question that took into consideration the positions of all States, including the proposals contained in document A/AC.182/L.79. He emphasized also the need for a permanent mechanism that would focus attention on various solutions, including the establishment of a trust fund, as well as preventive measures.
4. His delegation endorsed the recommendation to annex the draft United Nations Model Rules for the Conciliation of Disputes between States to a resolution or decision to be adopted by the General Assembly with a view to promoting the peaceful solution of disputes. It likewise endorsed the deletion of the "enemy State" clauses from the Charter on the ground that they were obsolete. Lastly, Jordan supported the recommendation that membership on the Special Committee should be open to all States.
5. Mr. SIDI ABED (Algeria) said that the Special Committee had not fulfilled its mandate under resolution 3499 (XXX) in the manner expected. Instead of playing its anticipated important role during the current period of transition in the life of the Organization, it had concentrated on peripheral topics with marginal impact.
6. In view of the increasing interest displayed by delegations in the work of the Special Committee, serious thought should be given to the that body's agenda, which should in future concentrate on matters relating chiefly to

/...

international peace and security, as well as on strengthening the role and effectiveness of the Organization. Given that the legal aspects of dispute settlement were amply covered by existing instruments, the Special Committee's agenda should not be overburdened with legal or other texts relating to the peaceful settlement of disputes which served no purpose unless States intended to abide by their provisions.

7. Given the lack of progress on implementing the provisions of the Charter concerning assistance to third States affected by the application of sanctions, he supported the Special Committee's decision to establish a working group within the Sixth Committee. Results would be modest until the international community demonstrated the political will to draw up practical and effective mechanisms to carry out those functions.

8. He agreed that the "enemy States" clauses were obsolete and should be deleted from the Charter, thereby strengthening the universal nature of that fundamental text. However, given the symbolic and political significance of the deletion, it would be neither practical nor appropriate to expect a rapid ratification process. Many States would prefer to wait until a whole series of amendments, including those relating to reform of the Security Council, could be ratified in a single operation.

9. Article 109 of the Charter stipulated that the legally and politically correct procedure for reviewing the Charter was to convene a general conference. He favoured a global approach which, while not while not setting a precedent, would take account of the deliberations of the General Assembly's working group on reform of the Security Council.

10. As an increasing number of States participated in its work as observers, the Special Committee had proved itself capable of fulfilling its initial mandate in responding appropriately to the perceived needs of States. The time had come to allow the Special Committee to play its part in reforming the Security Council and in strengthening the role of the United Nations.

11. Mrs. BAYKAL (Turkey) welcomed the Secretary-General's report on assistance to third States affected by the application of sanctions under Chapter VII of the Charter (A/50/361), which contained enlightening and useful proposals for minimizing the effect of sanctions on third States. While such sanctions certainly constituted an effective measures against the violators of international law, she shared the Secretary-General's view that their cost should be borne by all States Members of the Organization. The Charter clearly referred to the right of Member States to consult the Security Council with regard to a solution of their problems; however, its provisions, including Article 50, did not envisage any mechanism or guidelines for doing so. Since the Council was obliged to take appropriate measures under Article 50, permanent mechanisms must be established to permit effective implementation of that provision.

12. One possible means of mitigating adverse effects of sanctions on third States would be to enhance transparency in the work of the Security Council and its sanctions committees with regard to the imposition, implementation, review and lifting of sanctions. The Council should consider reviewing the existing

sanctions regimes in public meetings at which there was open debate, while the sanctions committees should conduct their deliberations in public meetings or inform non-members of their deliberations and decisions by circulating detailed reports periodically.

13. The financial problems suffered by third States as a result of the application of sanctions also required an urgent response. Temporary solutions, such as assistance from international financial institutions, were not sufficient. A permanent mechanism should be established to which States could apply for damages and from which they could receive compensation. It would not be sufficient merely to strengthen the Secretariat bodies dealing with sanctions and related issues.

14. Her delegation fully supported the draft resolution proposed by the Special Committee regarding deletion of the "enemy State" clauses from the Charter. The draft United Nations Model Rules for the Conciliation of Disputes between States should be adopted by the General Assembly as an annex to a resolution.

15. In conclusion, she emphasized that the Special Committee had an important role to play in the ongoing review of the Charter and was in no way diminished by the increasing number of committees and working groups established with the aim of reforming the United Nations.

16. Mr. NGO QUANG XUAN (Viet Nam) said that the United Nations should be restructured to keep pace with fundamental changes taking place on the international front. The role of the General Assembly should be enhanced, while the balance between the Security Council, the Assembly and the Secretary-General should reflect contemporary realities. The Security Council must be enlarged, with due attention paid to representation of the developing countries, in keeping with the principle of the equality of all Member States. Procedures and working methods must be adapted to achieve broader democracy and transparency. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization must become more actively involved in that inevitable process and integrate its work with that of other United Nations bodies. In that connection, the proposals submitted by Cuba and the Libyan Arab Jamahiriya deserved consideration.

17. The time had come to shift the focus of discussion of Charter provisions relating to assistance to third States affected by the application of sanctions onto the formulation of concrete and realistic measures. The elements contained in the Secretary-General's report were entirely feasible, and he welcomed the creation of the working group during the current session.

18. Timely assessment of the political and socio-economic aspects of sanctions, whether by sanctions committees or by special fact-finding missions, would help to make the necessary adjustments. A set of guidelines for procedures should be formulated, as proposed in paragraph 41 of the Secretary-General's report (A/50/361). He hoped that those proposals, as well as the proposal to establish a trust fund, would be reflected in the draft resolution to be submitted to the General Assembly for adoption.

19. He appreciated the Special Committee's work and recommendations on the draft United Nations Model Rules for Conciliation of Disputes between States proposed by Guatemala. In addition, his delegation supported the decision recommending that the General Assembly should open membership of the Special Committee to all States Members of the United Nations.

20. Mr. MASUKU (Swaziland) expressed his satisfaction at the progress achieved by the Special Committee in its work. Nevertheless, the Special Committee must take advantage of the existing political climate and the international community's continued faith in the ideals of the United Nations to find means for enhancing the Organization's effectiveness in meeting the new challenges posed by recent international developments.

21. Priority should be accorded to the special economic problems of third States arising from the implementation of sanctions, problems which were exacerbated by increasing global interdependence. Extreme flexibility must be exercised if sanctions were to be applied swiftly, efficiently and effectively. His delegation had serious reservations about the establishment of an independent trust fund and the suggested special windows of credit to be extended by the international financial institutions to States affected by sanctions. In its efforts to produce a more broadly acceptable formula, the Special Committee might consider setting up a mechanism within the Secretariat to evaluate the effects of sanctions before they were imposed, as suggested by the Secretary-General.

22. His delegation agreed in principle with the proposals on restructuring and reform of the Security Council. The membership of the Council had become increasingly inequitable, failing to keep pace with the expanded membership of the United Nations itself. Accordingly, it must be made more representative, transparent and democratic.

23. The draft United Nations Model Rules for the Conciliation of Disputes between States were commendable because they incorporated the concept of consent between States that were already parties to a dispute. They appeared, moreover, to conform with the provisions of the Charter. States should be allowed the latitude to appoint a single conciliator by agreement. The proposed Rules would serve all the purposes of conciliation, and would also prove cost-effective. He hoped that the proposal submitted by Sierra Leone would be considered further.

24. His delegation supported deletion of the anachronistic "enemy State" clauses from the Charter and welcomed the Special Committee's decision to submit a draft resolution on that subject for consideration and adoption by the General Assembly. Swaziland also supported the Special Committee's recommendation that its membership should be open to all Members of the United Nations.

25. Mr. MATIKO (United Republic of Tanzania) said that, although the topics which the Special Committee was mandated to consider deserved to be addressed individually, it was difficult to carry out any meaningful discussion of them outside the general context of the reform of the United Nations as a whole. When the Charter of the United Nations had been signed in 1945, most of the current Member States either had not existed or had been ineligible for membership in the Organization. Thus the specific aspirations of those States

had not been accommodated in the Charter. As newly independent States sought membership in the Organization, it became apparent that a review of the Charter was necessary to accommodate their interests.

26. With the end of the cold war, new forms of conflict had arisen, but since the structure of the Organization had not been designed to address them, a review of the United Nations had become necessary, in particular of those organs responsible for the maintenance of international peace and security, with a view to making them more responsive to such conflicts. In that connection he agreed that the Special Committee should become an open-ended entity within the framework of the Sixth Committee; the status quo should be maintained, with members and observers participating on an equal footing.

27. His delegation shared Cuba's view that the membership of the Security Council should be expanded, in order to enable it to meet the current challenges to international peace and security. The permanent members' power of veto should be eliminated in its current form. Since no State was permanently a great Power, there was no logic in maintaining an obsolete system which served the interests of only a select few. Moreover, the current pattern of representation on the Council did not take into account such factors as sovereign equality, equitable geographic distribution or economic power; consequently, the non-permanent membership should be expanded.

28. A lacuna existed in Article 50 of the Charter, since it failed to obligate the international community to come to the assistance of third States affected by the sanctions applied to another State. The burden of sanctions should be shared collectively and amendment of the Article should also provide for entitlement to fair and adequate compensation to third States. A trust fund should be established, supplemented by bilateral and multilateral support, to provide such compensation. However, it would be outside the scope of Article 50, and would in fact defeat the object of applying sanctions, to provide compensation to innocent segments of target States' populations. Although it was usually the innocent and the poor who suffered most when sanctions were applied, it was difficult to single out specific segments of the population in a given State for the purpose of compensation.

29. With increased technical capacity, the sanctions committees should continue to assess the economic and associated problems experienced by third States. However, the role of such committees should be redefined and their composition restructured to make them more transparent.

30. Emphasis should be given to preventing conflicts rather than restoring peace, and he was therefore pleased to note that the draft United Nations Model Rules for Conciliation of Disputes between States embodied some elements of preventive diplomacy. His delegation also believed that the time had come to let bygones be bygones and that the "enemy States" clauses should therefore be deleted from the Charter.

31. Mr. RAICHEV (Bulgaria) said that his country was one of those that suffered the most serious economic losses as a result of the strict implementation of sanctions against Iraq, the Libyan Arab Jamahiriya and especially the Federal Republic of Yugoslavia (Serbia and Montenegro). The cumulative loss from the

application of those sanctions was equivalent to 25 per cent of Bulgaria's estimated gross domestic product (GDP) for 1995. The social cost of the transition to a market economy, aggravated by the impact of the application of sanctions, had resulted in a drastic 40 per cent drop in per capita GDP during the previous five years.

32. Bulgaria endorsed the Secretary-General's views as set out in his report on assistance to third States affected by the application of sanctions under Chapter VII of the Charter (A/50/361), particularly his proposal for the establishment of guidelines for the consideration of applications for assistance to countries which invoked Article 50 of the Charter. The Secretary-General was correct in stating in his Supplement to an Agenda for Peace that sanctions were a measure taken collectively by the United Nations to maintain or restore international peace and security. The cost involved in their application should therefore be borne equitably by all Member States and not exclusively by the few who had the misfortune to be neighbours or major economic partners of the target country.

33. There was an obvious and legitimate need to address the question of assistance to third States in practical terms, and a mechanism should therefore be elaborated for assisting them. The proposal to establish a mechanism for consultations between the Security Council and countries that were likely to be affected by sanctions deserved serious and immediate consideration. Without prejudice to the sovereignty and autonomy of the Security Council, such consultations would help to provide a fuller and clearer understanding of the possible adverse effects of sanctions on third countries. His delegation looked forward to the practical implementation of that proposal, possibly through the discussions on Article 50 which were currently taking place in the working group.

34. His delegation attached equal importance to the proposal for the establishment of a forum for consultations between affected third countries and the donor community at large, in which an assessment of needs based on a common methodology could be carried out and specific remedial measures, including the identification of funding sources, jointly elaborated.

35. While his delegation could understand some of the arguments raised against the establishment of a trust fund, countries which bore the burden of implementing sanctions ought to be able to count on the availability of specific resources for easing the negative impact of sanctions on their economies. The involvement of the international financial institutions and of the Economic and Social Council in providing assistance to the affected States was therefore of great importance. Bulgaria also agreed with the Secretary-General regarding the elaboration of a general methodology for impact analysis and damage assessment by an ad hoc expert body (A/50/361, para. 48).

36. A question of primary importance was the utilization of existing financial institutions and the search for other forms of assistance. His delegation wished to endorse, in particular, the use of such alternative forms of assistance as set-aside programmes, "doable programmes" in the affected countries, and promotion of foreign investment to the affected countries through multilateral or bilateral investment guarantees by donor Governments.

37. The Security Council should, in accordance with Article 48 of the Charter, consider on a case-by-case basis the granting of partial or limited exemptions from the sanctions regime in favour of the most adversely affected States, under appropriate forms of monitoring and control. The implementation of sanctions could also be made more effective by improving the mechanisms and criteria for their implementation and lifting. All sanctions should have clearly defined objectives and should be lifted once those objectives were met. There was obviously a need to improve the monitoring of sanctions through periodic reviews, which should be explicitly provided for in the resolutions under which the sanctions themselves were imposed.

38. On the question of the "enemy State" clauses of the Charter, his delegation supported the view that those clauses were obsolete and that, consequently, the General Assembly should initiate the procedure set out in Article 108 of the Charter with a view to their deletion.

39. As for the decision taken by the Special Committee to open its membership to all States Members of the Organization, he believed that that decision would enhance the deliberations of the Special Committee.

40. Mr. MATRI (Libyan Arab Jamahiriya) said that the important changes which had taken place in international relations since the founding of the United Nations had made it essential to restructure the Organization and revitalize its bodies to make them capable of keeping abreast with world developments and contributing to the cause of international peace and security. Such a restructuring should democratize the working methods of all United Nations bodies, particularly the Security Council, in accordance with the basic provisions of the Charter.

41. In that connection, the Libyan Arab Jamahiriya had submitted a proposal to the Special Committee which included ideas regarding the Security Council. In particular, it had called for the consideration of ways and means of enhancing the role of the Council in the maintenance of international peace and security and ending the use of the unanimity rule, which was an obstacle to the discharge by the Council of its responsibilities under the Charter. In addition, the membership of the Council should be expanded to reflect the large increase in the general membership of the Organization, taking into consideration the principle of equitable geographical distribution. Lastly, consideration should be given to the possibility of abrogating the power of veto and of determining non-procedural questions in respect of which the use of that power might be terminated or restricted.

42. The Libyan Arab Jamahiriya had been expressing increasing concern over the Council's use of double standards in the adoption of its resolutions. It was essential to consider measures aimed at removing such concerns, thereby enhancing justice and the rule of law.

43. If the international community was serious about restructuring the United Nations to make it compatible with the international changes that had taken place, then the General Assembly should play an active role in the maintenance of international peace and security, and a better balance should be sought between the main bodies of the Organization. Since the General Assembly was the international forum for deliberating and preparing resolutions on international

questions, its practical role must be enhanced, particularly in matters related to international peace and security. The Security Council should be held politically accountable to the Assembly so that its activities did not exceed its mandate or contravene the provisions of the Charter. The General Assembly should formulate guidelines for the use of armed force and for consultations with the Security Council before the imposition of sanctions in the name of the United Nations, under Chapter VII of the Charter.

44. In view of the increase in hotbeds of tension and instability and the eruption of civil wars and destructive ethnic conflicts throughout the world, and given the burdens shouldered by the United Nations, his delegation called for the creation of an effective mechanism for enhancing the role of regional organizations in the maintenance of international peace and security. Such a step should be taken in cooperation with the United Nations and in a manner that would guarantee the sovereignty of States and non-interference in their internal affairs.

45. Regional organizations should be given a role to play in solving disputes by peaceful means, in accordance with Chapter VIII of the Charter. The resolutions of such organizations should be respected and the Security Council should consult with them and give them a chance to find peaceful solutions to international disputes before adopting any resolutions itself. He welcomed the contribution of the Special Committee to the elaboration of the Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security, contained in General Assembly resolution 49/57. Implementation of that resolution would strengthen the Organization's effectiveness in the areas of preventive diplomacy and regional cooperation.

46. Respect for international conventions was the best means of maintaining peace. The Charter had confirmed that settling disputes by peaceful means was the primary goal of the United Nations. It was for that reason that the International Court of Justice should participate in the settlement of disputes by peaceful means and the awards of the Court should be respected. The Court had contributed on many occasions to the maintenance of peace among parties to disputes, as in the case of its decision in the territorial dispute between the Libyan Arab Jamahiriya and Chad, which had put an end to a 20-year-old dispute that had threatened regional peace.

47. Mr. Han Taek LIM (Republic of Korea) said that, as an advocate of the concept of lending assistance to States adversely affected by the application of sanctions under Chapter VII of the Charter, his delegation had a keen interest in strengthening consultations between the Security Council and States potentially affected by the imposition of sanctions. With the growing consequences of sanctions on third States in an increasingly interdependent world, it was essential to either improve the current consultation mechanism or create a more effective one in order to give affected States more opportunities for presenting their cases. Further consideration of the matter was needed, given the disparate views on the modalities for providing assistance to affected States.

48. He welcomed the completion of the drafting of the United Nations Model Rules for the Conciliation of Disputes between States. Conciliation had been

one of the most frequently applied and effective means for the peaceful settlement of disputes in many international instruments. Its beauty lay in its flexibility based on freedom of choice. He therefore hoped that it would be adopted by the General Assembly at the current session.

49. His delegation embraced the spirit of the proposal submitted by Sierra Leone entitled "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes". While that initiative could be instrumental in strengthening the role of the Organization in the peaceful settlement of disputes, certain aspects, such as the initiation of the procedure, the relationship and division of labour between administrators and settlors, and the respective functions of the latter, needed further refinement. The proposal should also be given a more organized and systematic format to facilitate ease of usage. His delegation hoped that the proposal would be considered in greater depth at the 1996 session of the Special Committee.

50. He supported the recommendation to open the Special Committee to all Member States. Such a change would help to revitalize the Special Committee's activities and place them on a more democratic and universal footing. Moreover, given that the Special Committee's activities had been rather modest since its inception, the full participation of all Member States and a more transparent working method would add a new dimension to its role of enhancing the effectiveness of the Organization by adapting the Charter to the new international realities and by drawing the attention of Member States to a wider range of issues. In the light of the Special Committee's new composition, a course of action for its future work should be mapped out in terms of specific tasks and time-frames for their accomplishment.

51. With regard to the length of the 1996 session, his delegation was in favour of a short session, as in 1995. Given that the Ad Hoc Committee charged with reviewing the major substantive and administrative issues arising out of the draft statute of an international criminal court was expected to have an initial session of two or three weeks in early 1996, the Special Committee's session should be reduced to two weeks in order to alleviate the burden on many delegations.

52. Mr. ENAYAT (Islamic Republic of Iran), referring to the question of assistance to third States affected by the application of sanctions, said that in recent years the Security Council had frequently used economic sanctions as enforcement measures. The detrimental effects of such sanctions, however, were felt not only by the targeted country but also by third States. In order to implement Article 50 of the Charter, a set of measures should be elaborated to protect third States from such adverse effects. His delegation shared the view that economic sanctions could not solve international disputes and therefore should not be applied as a means of obtaining political goals. In fact, it was often the most vulnerable groups within the targeted country's population that suffered most from economic sanctions.

53. With regard to the draft United Nations Model Rules for the Conciliation of Disputes between States, it was obvious that peaceful settlement of disputes was central to the strengthening of the role of the United Nations and that conciliation was an essential part of preventive diplomacy. The text adopted by the Special Committee could therefore provide a comprehensive framework in that

field. It must be stressed, however, that the draft Model Rules remained optional and the consent of all parties to a conflict was needed at every stage of the peaceful settlement of disputes. Conciliation, moreover, was a diplomatic method and thus a political, and not a legal, modality for the peaceful settlement of disputes. He therefore supported the decision to delete original draft article 8.

54. His delegation also supported the recommendation that membership of the Special Committee should be open-ended to permit all Member States to participate. Furthermore, the Special Committee should continue to operate on the basis of consensus.

55. Lastly, his delegation supported the draft resolution contained in paragraph 65 of the Special Committee's report, which called for the deletion of the "enemy State" clauses in Articles 53, 77 and 107 of the Charter. Those clauses were obsolete and bore little relevance to the current situation of the Organization.

56. Mr. STRAUSS (Canada) agreed with the recommendation that the Special Committee should be open to all Member States and should continue to operate on the basis of consensus.

57. He was uncomfortable, however, with the duplication of the debate on the implementation of Article 50 of the Charter which was taking place in the Special Committee and its Working Group on the one hand and in the Security Council and the General Assembly on the other. Such duplication within the United Nations system was both unproductive and inefficient. The Special Committee should agree on what it could reasonably achieve in 1995 and move on to other matters in which it had a better chance of success.

58. Ms. BOUM (Cameroon) said that the Special Committee had been created as the result of a compromise between those States which held that the strengthening of the role of the Organization required a revision of the Charter and those which believed that that objective could be achieved without formally amending the Charter. Experience had shown that the latter point of view had prevailed in the work of the Special Committee. Documents prepared by the Special Committee were almost always in the form of non-binding declarations which merely restated the provisions of the Charter. Proposals aimed at strengthening the role of the Organization and enhancing its effectiveness had never had any chance of success. Mindful of that situation, no doubt, the General Assembly had created a number of ad hoc working groups whose mandates often duplicated that of the Special Committee. Consequently, those who were genuinely concerned about the procedures of the General Assembly could not help but raise questions about the Special Committee's current raison d'être. Although the usefulness of the Special Committee had been called into question in the Sixth Committee before, the time had perhaps come to think seriously about the value of its continued existence.

The meeting rose at noon.

UNITED NATIONS
General Assembly
FIFTIETH SESSION
Official Records

SIXTH COMMITTEE
37th meeting
held on
Monday, 13 November 1995
at 10 a.m.
New York

SUMMARY RECORD OF THE 37th MEETING

Chairman:

Mr. LEHMANN

(Denmark)

CONTENTS

AGENDA ITEM 145: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/50/SR.37
14 December 1995
ENGLISH
ORIGINAL: SPANISH

95-82218 (E)



/...

The meeting was called to order at 10.25 a.m.

AGENDA ITEM 145: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)
(A/50/33, A/50/361 and A/50/403)

1. Mr. BAXTER (Australia) said that he welcomed the results achieved in 1995 by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. In particular, the proposal to delete the clauses referring to "enemy States" would serve as a basis for updating the Charter. His delegation also endorsed the recommendation that the Special Committee should be open to all Member States. The delegation of Guatemala had done fruitful work which had resulted in the adoption of the Model Rules for the Conciliation of Disputes between States, which was the most substantial outcome of the Special Committee's 1995 session.
2. Australia had followed with great interest the discussions held in the Working Group of the Special Committee with regard to assistance to third States affected by the application of sanctions under Chapter VII of the Charter. In that respect, it must be recalled that at the United Nations Congress on Public International Law, held in March 1995, the delegations of Australia and the Netherlands had presented a joint paper accompanied by a questionnaire on the implementation of sanctions, which had been distributed to the United Nations missions in New York. Several responses to the questionnaire had already been received.
3. With regard to the question of assistance to third States affected by the application of sanctions, the right balance must be found between, on the one hand, the need for the Security Council to retain maximum flexibility in designing and imposing sanctions in order to maintain international peace and security and, on the other hand, the need to minimize the secondary effects of sanctions. Important questions of principle had been raised during the debate: for example, whether the Security Council should be subject to procedural constraints when taking action under Chapter VII, or whether the actions taken by the Council should give rise to a right to compensation for those States which had suffered damage as a result of sanctions.
4. His delegation did not feel that the Special Committee's current mandate, which was concerned with the implementation of the provisions of the Charter relating to sanctions, could serve as the basis for resolving questions of principle such as those he had mentioned. On the contrary, the debate should focus on practical questions, such as what problems arose for States which were particularly affected by sanctions regimes and how existing practices and procedures might be improved to alleviate the difficulties of those States. The debates in the Special Committee on the Charter and the Working Group of the Sixth Committee had made it clear that the various sanctions regimes had given rise to problems for a number of States. The principal problem lay in the lack of adequate mechanisms that might be used by States to remedy the adverse economic effects which resulted from the imposition of sanctions on other States with which they maintained close economic relations. Furthermore, a number of delegations had noted problems of communication of information between the

Security Council and States specially affected by sanctions. Another problem was the lack of standards for measuring the economic damage incurred as a result of the implementation of sanctions.

5. The Security Council understood the concerns of specially affected States, as was seen by the fact that it had modified its procedures in order to improve the transparency of their operations and to facilitate their access by specially affected States. Furthermore, some international financial institutions, such as the International Monetary Fund, had significantly changed their policies in order to increase their assistance to specially affected States. However, more must be done. Some States felt that they were shouldering an inequitable share of the burden of individual sanctions regimes, whose ultimate goal was to ensure the maintenance of international peace and security for the benefit of all. All Member States must therefore work together and put in place procedures so that no State suffered unnecessary harm. Specially affected States must receive more information at all stages of the sanctions process (in other words, from their design to their review) so that they could address changes in trade flows which resulted from sanctions regimes. Such States needed more information on how the Security Council planned to implement sanctions and on the assistance which the Council might be able to provide and the form such assistance might take. The situation could be improved by refining the lines of communication between the Secretariat and specially affected States.

6. Some delegations had proposed that a trust fund should be established to assist specially affected States. His delegation had serious reservations about the trust fund proposal on the grounds of both cost and principle. The Charter of the United Nations did not authorize the creation of such a fund, since Article 50 referred only to the right of specially affected States to consult the Security Council. None the less, Australia understood the concerns expressed by specially affected States. It was therefore necessary to examine alternative approaches to improving the operation of existing mechanisms rather than creating new ones. In the course of the debates, there had been no proposal which satisfied both the delegations which supported the establishment of a trust fund and those which opposed it. The whole point of the debate was the fact that certain States were suffering harm as a result of the implementation of sanctions. It was therefore necessary to help them at once rather than hoping to achieve an unlikely consensus on more ambitious proposals. Such a hope could only entail costs for specially affected States. Moreover, it must be remembered that other forums were also considering the operation of sanctions regimes in a more general context; it was therefore important to avoid duplication and, in particular, any inconsistency of approach.

7. Mr. PATRONAS (Greece) said that his country was among those most affected by the implementation of sanctions under Chapter VII of the Charter. A solution must be found to the problems of third States affected under Article 50 of the Charter. The report of the Secretary-General contained in document A/50/361 contained proposals and suggestions which should be carefully examined. In particular, his delegation supported the ideas expressed in the report with regard to monitoring the effects of sanctions, the possibility of establishing a time-frame for their application and the adjustment of the sanctions regime to accommodate the needs of affected third countries. Economic assistance by international financial institutions was also of the greatest importance. In

that regard, one of the proposals in a recent letter dated 18 May 1995 from the Permanent Representatives of Bulgaria, Greece, the Republic of Moldova, Romania and Ukraine to the United Nations addressed to the Secretary-General (A/50/189-S/1995/412) had been to speed up the procedures for processing applications for transshipments and delivery of humanitarian aid by the relevant sanctions committee; to facilitate the access of companies from the affected countries in question to borders by United Nations humanitarian organizations for rendering humanitarian assistance to Bosnia and Herzegovina and the Federal Republic of Yugoslavia (Serbia and Montenegro); to allocate additional financial resources to the implementation of long-term transport infrastructure projects; to provide for additional measures or special assistance projects in the fields of telecommunications, energy, water supply and the environment, among others; and to increase technical assistance to, and analytical support of, the international financial institutions for the objective estimation of losses and their impact on the balance of payments of the affected countries.

8. There was no doubt that the question of sanctions was directly related to the non-implementation of Security Council resolutions, such as those regarding Cyprus. That had always been a problem; however, it must be rectified immediately now that the United Nations was assuming an increasingly important role in internal relations.

9. His delegation attached great importance to the fundamental principle of the peaceful settlement of disputes between States and firmly believed that the international community should continue in its efforts in that regard. To that end, Greece had recently made a declaration regarding the compulsory jurisdiction of the International Court of Justice under article 36, paragraph 2, of the Statute of the Court. Greece had also ratified the Convention on Conciliation and Arbitration concluded in 1992 within the framework of the Organization for Security and Cooperation in Europe.

10. Greece supported the draft United Nations Model Rules for the Conciliation of Disputes between States submitted by Guatemala but regretted that the draft did not provide a concrete legal basis for the commission of conciliators to use in drawing up its recommendations. Furthermore, document A/50/403 contained a detailed commentary and clarification of the Dispute Settlement Service offering or responding with its services early in disputes, which had been proposed by Sierra Leone and which would facilitate the work of the Special Committee.

11. Mr. HAMID (Pakistan) said that the capacity of the United Nations to fulfil its primary objective of maintaining international peace depended primarily on the attitude of Member States towards complying with their legal obligations under the Charter. His country, which did not favour any radical changes in the Charter, was aware that global transformations in recent years called for some reform in the Charter, in accordance with the mechanism provided under Article 108. Thus, because the number of States Members of the United Nations had increased, the number of members of the Security Council should also be increased. While such an increase must be based on the principle of equitable geographical distribution, new members should not be accorded permanent or semi-permanent status, as that would be at variance with the principle of sovereign equality. The current existence of permanent members already

constituted an inequity; reinforcing it could only create new centres of power and privilege within the United Nations.

12. His country endorsed the amendment to the Charter proposed by Poland and endorsed by the Special Committee under which the "enemy State" clauses in Articles 53, 77 and 107 would be deleted.

13. His delegation endorsed the Special Committee's recommendation to submit the draft United Nations Model Rules for the Conciliation of Disputes between States, introduced by Guatemala, to the General Assembly to be annexed to a resolution or decision. The Model Rules, which were flexible and non-binding, would provide an additional mechanism for the peaceful settlement of disputes between States.

14. Pakistan was one of the countries most affected by the application of sanctions under Chapter VII of the Charter. If States remained without compensation for their losses, they might later find it difficult to give full effect to Security Council decisions. At the same time, his delegation was in favour of reviewing each case individually in order to determine the specific economic problems faced by each country.

15. He endorsed the Special Committee's recommendation, contained in paragraph 67 of its report, that the Committee should in future be open to all States Members of the United Nations. However, it did not agree with the proposal that the Committee's decisions must be adopted by consensus, as that might paralyse the work of the United Nations. That system was one reason why the League of Nations had failed to take effective measures for the maintenance of international peace and security.

16. The rule of law in international relations should be promoted by greater recourse to the International Court of Justice for adjudication of disputes between States or advisory opinions on the legal aspects of such disputes. States which had not yet done so should be encouraged to accept the compulsory jurisdiction of the Court.

17. Mr. ABDUL HALIM (India) said that the question of assistance to third States affected by the application of sanctions under Chapter VII of the Charter had assumed particular importance in the post-cold-war era owing to the frequent use of sanctions and their duration. Experience had shown that economic embargoes and trade sanctions gave rise to undesirable consequences for third States and, in particular, for developing countries. Moreover, doubts had been raised as to the efficacy of sanctions as a policy instrument. The Security Council must take the necessary action to counteract the effects of sanctions on third States. In his view, the United Nations should adopt a general policy in that regard, based on the following premises: assistance to third States affected by the application of sanctions was a legal obligation under the Charter and, as such, must be considered as an integral part of any sanctions regime; the United Nations must establish appropriate mechanisms and provide financial resources to offset the impact and consequences of sanctions on third States affected by their application; assistance should be provided automatically so that the consequences of economic sanctions could be predicted; the Security Council should establish a funding mechanism financed from assessed

and voluntary contributions to provide assistance to affected States; the United Nations should have the core responsibility for assisting States affected by the application of sanctions in accordance with Article 50 of the Charter; and regular consultations should be held between affected States and the Security Council for the purpose of dealing with the adverse consequences of sanctions for those States. For that reason it was important to assess properly the consequences of sanctions before and during their imposition. Furthermore, assistance from international financial institutions, bilateral sources and other donors could not be a substitute for United Nations assistance.

18. Conciliation, like the use of good offices and mediation, must be flexible and voluntary. The proposed United Nations Model Rules for the Conciliation of Disputes between States would therefore serve as another optional dispute settlement mechanism to which States could have recourse. In order to avoid any duplication of dispute settlement mechanisms, it was important to have more precise details regarding the proposal submitted by Sierra Leone entitled "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes", which provided for the establishment of a board of administrators. It was also important to determine whether the proposal would contribute significantly to United Nations efforts in that area.

19. His delegation attached importance to the question of deleting the "enemy State" clauses from the Charter, given that those States were active participants in the Organization and maintained close and friendly relations with India.

20. As a State Member of the United Nations and a member of the Special Committee on the Charter, his country welcomed the recommendation that the Special Committee should be open in future to all States Members of the United Nations since all bodies in the system needed to be more transparent, democratic and representative. His delegation also endorsed the recommendation that the Committee should continue to operate on the basis of consensus.

21. Mr. KULYK (Ukraine) said that because increasingly frequent use was being made of the sanctions provided for under Chapter VII of the Charter, the problem of the adverse economic consequences of sanctions had acquired a new dimension. As a responsible Member of the United Nations, his country had always complied fully with the sanctions imposed by the Security Council. At the same time, however, it found unacceptable the fact that, as things stood, the consequences of sanctions were suffered primarily by States which bordered on or had close economic ties with the sanctioned State. That situation might lead to a loss of confidence in the institution of sanctions.

22. The question of the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter was of great importance to many States. Article 50 of the Charter did not provide any solution, owing to the absence of a mechanism for implementation. Nor was it enough to recognize that a problem existed: concrete proposals must be elaborated. In that connection, his country supported the proposals to establish a mechanism to provide assistance to third States. Such a mechanism could include consultations under Article 50 of the Charter between the Security Council and potentially affected third States; a

preliminary assessment of sanctions before imposing them and an estimation of their consequences, so that the Security Council could impose the most effective sanctions possible against the target State and reduce to a minimum any collateral damage; consideration, on a case-by-case basis, of the possibility of introducing exceptions under the sanctions regime provided that they did not run counter to its purpose; and an analysis of the predictable consequences for third States. Advance consultation with an early warning of third States which might be affected by sanctions could increase the effectiveness of those sanctions. The mechanism might include a number of other ideas, such as methods of work and capabilities of the Secretariat and the sanctions committees, taking into account the entire range of problems associated with the imposition of sanctions.

23. International financial institutions could also play a useful role because they had the resources to provide assistance to affected States. Those institutions should consider the possibility of establishing a mechanism to assist affected third States, which should include a system of consultation and substantive measures, on a stand-by basis, if possible. Other measures worthy of consideration were the opening of lines of credit by international financial institutions, more rapid access to compensatory credits, increased or accelerated disbursement from existing loans or credits and the use of coordination mechanisms.

24. Ukraine considered that special attention should be attached to the proposals to mobilize other possibilities in order to protect the economic interests of third States, especially those which did not require additional funding from the international donor community. Some of those possibilities were: introduction of special trade preferences on a temporary basis, allocation to the affected States of some of the import quotas that had previously been assigned to the target States, and promotion of private foreign investments to the affected countries. The imposing of sanctions in accordance with Chapter VII of the Charter might serve as a trigger mechanism for the beginning of consultations between the States concerned and relevant international authorities about the possible ways of implementing those measures.

25. The issue was a complicated one, and an effective solution would show States' commitment to the principles of the Charter and would therefore reinforce the Organization's authority. Ukraine shared the view that the time had come to delete the "enemy State" clauses from the Charter and welcomed the recommendation of the Special Committee in that regard.

26. Ukraine was also pleased with the conclusion of the work on the Model Rules for the Conciliation of Disputes between States. Such rules would be a flexible, non-binding and effective instrument and a useful addition to existing arrangements.

27. Ukraine fully supported the transformation of the Charter Committee into an open-ended body, which would promote better utilization of opportunities in finding solutions to the issues covered by its mandate.

28. Mr. TURK (Slovenia) said that the Special Committee had concluded its work on the United Nations Model Rules for the Conciliation of Disputes between States. The model retained the flexibility needed in a method based on the idea of an amicable settlement. After pointing out some of the main characteristics of the model, particularly articles 7, 20-24, 27 and 28, he said that Slovenia endorsed the Special Committee's recommendation and he expressed the hope that new life would thus be given to that method of settlement of disputes which had hitherto attracted only modest attention.

29. Sierra Leone's proposal on the establishment of a Dispute Settlement Service offering or responding with its services early in disputes merited further study, since conflict prevention was obviously of primary importance. It was clear that the General Assembly had not done enough in the field of prevention of conflicts or peaceful adjustment of situations which were likely to impair the general welfare of nations or friendly relations among them. That was not due to a lack of powers on the part of the General Assembly since, quite to the contrary, Article 14 of the Charter provided the Assembly with the authority to recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deemed likely to impair the general welfare or friendly relations among nations. Often Member States underestimated emerging situations of conflict or, for reasons of short-term convenience, decided not to deal with them. Such situations often also included aspects which, in the eyes of the Government concerned, were essentially within its domestic jurisdiction. Those were important issues since, in order for a situation to be considered a dispute, it must be, at least to a minimum degree, recognized as such and there had to be a minimum of readiness on the part of the State or States involved to accept an initiative by the United Nations.

30. With those problems in mind, the General Assembly, in resolution 47/120 B of 20 September 1993, had decided to consider the use of existing machinery or new machinery, including subsidiary organs under Article 22 of the Charter, to facilitate consideration of any situation coming within the scope of Article 14 of the Charter. It had been expected that further discussions on preventive diplomacy would provide insight into what could actually be done. Unfortunately, discussions were essentially at the same point as they had been in 1993. A quick reading of the proposal showed that, in order to establish a satisfactory non-redundant mechanism, a substantial amount of additional work would be necessary. First, the political nature of Article 14 must be kept in mind, and so good offices, mediation and General Assembly recommendations would seem to be appropriate responses in addressing those situations. Second, any institutional mechanism for dealing with such situations should be tied to the General Assembly, which would make it easier to avoid duplication. Of course, the provisions of Article 12 would always have to be respected. Slovenia was prepared to participate in establishing such a dispute settlement service.

31. The question of the effects of sanctions imposed under Chapter VII of the Charter was being discussed in two different working groups, which could be cause for concern. On the other hand, it was important that the discussion in both working groups focused on possible practical improvements within the United Nations system.

32. One of the possible improvements could be the preparation by the Secretariat, prior to Security Council decisions on new sanctions, of an assessment of the effects of proposed sanctions on third States. That would help the Security Council adopt a truly informed decision. The actual effects of sanctions prepared in such a manner would be more likely to influence the behaviour of the target State, while the adverse effects on third States would be reduced. To that end, perhaps it would be useful to create a "focal point" as suggested by France several days before.

33. One of the most important achievements of the latest session of the Charter Committee had been its recommendation to delete the "enemy State" clauses from the Charter. Slovenia hoped that work on reform of the Security Council would be successful and would provide an appropriate and early occasion for the necessary revision of the Charter.

34. Revision of the Charter must be undertaken in a responsible and open-minded manner. Other provisions that had become obsolete were those relative to the Trusteeship Council, which should also be deleted. Future situations which might arise requiring involvement of the United Nations in something resembling international trusteeship should be considered on a case-by-case basis.

35. On the other hand, it would be appropriate to consider Malta's proposal concerning a trusteeship for the common heritage of mankind, which would be different in nature from the United Nations original trusteeship responsibilities. A new principal organ of the United Nations would be required, with a name similar to the Trusteeship Council, but with new powers and functions.

36. The proposal for transformation of the Charter Committee into an open-ended organ was timely and wise. Slovenia had been among those who had pleaded for such a transformation at the forty-ninth session of the General Assembly and was pleased to see that such a change was likely.

37. Mr. SYARGEEU (Belarus) noted with satisfaction that the United Nations had made clear its right to act as a universal instrument in the resolution of problems of a global nature. International events had also underlined the need to make the maintenance of international peace and security and the settlement of disputes between States more efficient. It was therefore necessary that the Special Committee put forth proposals for new, flexible approaches which would enable the United Nations to play a decisive role in that area.

38. Belarus recognized the urgent nature of the problem of the negative economic effects on third States of sanctions imposed by the Security Council pursuant to Chapter VII of the Charter. The number of countries bearing an intolerable economic burden grew with each passing year. Unquestionably, the creation of a permanent mechanism would provide States with an incentive to fulfil their obligations and would therefore strengthen international stability. Given the complexity and seriousness of the negative effects of sanctions, the issue must be addressed in a wide-ranging manner and there must be an impartial analysis of proposals related to the imposition of sanctions. The issue also had a political dimension since it prevented progress in international relations and kept sanctions imposed by the Security Council from having more authority.

/...

The Security Council must be more flexible in fulfilling its mandate concerning sanctions. It was indispensable to create conditions which would allow the Council to act efficiently and effectively in maintaining international peace and security. At the same time, the permanent mechanism should anticipate the possible adverse economic consequences of its acts. Such an analysis should be carried out before the decision was taken to impose sanctions.

39. Belarus considered that a clear procedure should be established for holding consultations before and after the imposition of sanctions. Such a mechanism could also fulfil a preventive role. The ideas relating to strengthening international financial institutions, preparing a uniform methodology for the evaluation of damage and offering assistance through third States also deserved attention. Belarus shared the views expressed in the Sixth Committee regarding finding means to compensate for damages suffered which would give third States guarantees, even before sanctions were imposed, on the nature and extent of the assistance to which they might be entitled. Bilateral assistance also deserved consideration in the context of partial compensation.

40. The possibility of strengthening and improving cooperation between the United Nations and regional organizations with a view to maintaining international peace and security should be supported. Given the large number of conflicts throughout the world and the limited resources available to the United Nations, regional organizations had an important role to play in preventive diplomacy and the establishment and maintenance of peace. For geographic reasons, regional organizations had access to more comprehensive information on the reasons for and salient features of conflicts and stood a better chance of solving them at an early stage. Such inter-institutional cooperation should be complementary and should be carried out in accordance with the purposes and principles of the Charter. The general discretionary powers of the Security Council, the special characteristics of the regional organizations and agreements and the expediency of using them in a specific situation should be taken into account.

41. He commended the draft United Nations Model Rules for the Conciliation of Disputes between States. Adoption of the Rules would make it possible to implement more fully the potential of the United Nations, which was the most suitable forum for applying such a procedure. Belarus endorsed the recommendation that the draft should be approved by the General Assembly.

42. Belarus agreed that the procedure set out in Article 108 of the Charter should be set in motion in order to delete from Articles 53, 77 and 107 the clauses referring to "enemy States", since that was an obsolete concept.

43. He also supported the view that the Special Committee should become an open-ended body, on the understanding that its work would be conducted on a consensus basis.

44. International relations had reached a new level, serving as a catalyst for improving the role of the United Nations and other international organizations in the maintenance of international peace and security and the settlement of disputes between States. To that end, the full range of options offered by the

Charter should be used more effectively and international cooperation should be increased.

45. Mr. POLITI (Italy), referring to the question of implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions, said that he fully concurred with the views expressed by the representative of Spain on behalf of the European Union; he agreed that every effort should be made to find equitable and practical solutions to the problems encountered by States indirectly affected by sanctions. In that regard, the draft resolution submitted by the European Union proposed mechanisms and instruments that could provide a concrete solution to the problem.

46. He endorsed the proposal that the General Assembly should adopt, at the current session, the text of the United Nations Model Rules for the Conciliation of Disputes between States, which would be a valuable instrument for States in applying conciliation procedures for settling political and legal disputes. He also looked forward to the Committee's further consideration of the proposal for the establishment of a dispute settlement service, and welcomed the detailed commentary and clarification of the proposal recently submitted by the delegation of Sierra Leone.

47. It was recommended in paragraph 65 of the Special Committee's report (A/50/33), that the General Assembly should adopt the draft resolution on the deletion of the "enemy State" clauses of the Charter. The adoption of that resolution would set the basis for a quick process of amendment of the Charter allowing for the elimination of provisions that had become totally obsolete. In that regard, he shared the view recently expressed by the representative of Portugal that action on deleting the "enemy State" clauses should not be delayed in anticipation of a broader reform of the Charter.

48. Lastly, he welcomed the recommendation that the Special Committee should be open to all States Members of the United Nations and that it should continue to operate on the basis of consensus. Italy, which had been a member of the Special Committee since its establishment in 1975, was strongly in favour of increasing democracy within the United Nations; making the Special Committee an open-ended body would be an important step in that direction. Full participation of all Member States in the work and deliberations of the Special Committee could only enhance its capacity to fulfil its mandate.

49. Mrs. CUETO (Cuba), speaking on the question of implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, said that the Committee should continue to consider the issue on a priority basis, since the absence of legal rules prevented the Organization from responding effectively to the valid concerns of the increasingly growing number of third States which were affected by the imposition of sanctions by the Security Council. Her delegation agreed that it was necessary to seek a practical and equitable solution to the economic problems confronting third States as a result of the imposition of preventive or coercive measures by the Security Council. To that end, it was essential that an appropriate, practical and effective mechanism should be established that was compatible with the

principles of sovereignty and the consent of States and that was not subjected to any type of conditionality.

50. With respect to the peaceful settlement of disputes between States, Cuba had always expressed a preference for direct negotiation, although it did not underestimate either the importance or the effectiveness that other existing mechanisms of international law had demonstrated in specific circumstances. In that regard, she considered that the draft United Nations Model Rules for the Conciliation of Disputes between States might become an appropriate document, provided that it did not have binding force and was based on the consent of States. Such conditions should be formulated in the resolution for formal adoption of the draft Model Rules, which could be appended as an annex to the Handbook on the Peaceful Settlement of Disputes between States. While the proposal on the establishment of a Dispute Settlement Service offering or responding with its services early in disputes reflected some progress in the work and deliberations of the Sixth Committee on the issue, it should be studied in depth in the light of the basic principles of respect for sovereignty, non-interference in the internal affairs of States and the consent of States.

51. Turning to the composition of the Special Committee, she said that Cuba supported the full participation of all States in its work, since it considered that both the Charter and the work of the Organization were the common heritage of all Member States.

52. Lastly, she pointed out that, however valid the financial concerns of the delegations which favoured rationalization, new solutions should be proposed to meet existing challenges before rationalization of the work of the Special Committee and its sessions was considered.

53. Mrs. FERNÁNDEZ de GURMENDI (Argentina) said that the efficient work carried out by the Special Committee in just two weeks on two issues which were technically and politically very complex was proof that the proposal to shorten the duration of its sessions was well-founded.

54. Furthermore, she expressed her satisfaction at the completion of the work on the United Nations Model Rules for the Conciliation of Disputes between States and the hope that they would be adopted by means of a resolution.

55. The Special Committee had managed, after sensitive negotiations, to formulate a recommendation for the deletion of the "enemy State" clauses of the Charter. Argentina had actively supported the deletion of those obsolete clauses and hoped that the Special Committee's recommendation proposing a balanced solution for the elimination of the clauses would be adopted by consensus in the Sixth Committee.

56. Turning to the subject of third States affected by the application of sanction imposed by the Security Council, she expressed the hope that the discussions in the Working Group would lead to concrete measures reflected in a resolution.

57. Lastly, she felt that the nature of the issues dealt with by the Special Committee was, by definition, of interest to all Member States, which should be

/...

able to participate on an equal basis not only in the discussions but also in the adoption of decisions. She therefore hoped that, during the current session, the Special Committee would finally be opened up to all States Members of the United Nations without exceptions or exclusions.

The meeting rose at 11.55 a.m.

UNITED NATIONS
General Assembly
FIFTIETH SESSION
Official Records

SIXTH COMMITTEE
38th meeting
held on
Tuesday, 14 November 1995
at 10 a.m.
New York

SUMMARY RECORD OF THE 38th MEETING

Chairman:

Mr. LEHMANN

(Denmark)

CONTENTS

AGENDA ITEM 140: UNITED NATIONS DECADE OF INTERNATIONAL LAW

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned within one week of the date of the publication to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/50/SR.38
13 December 1995
ENGLISH
ORIGINAL: SPANISH

95-82236 (E)



/...

The meeting was called to order at 10.30 a.m.

AGENDA ITEM 140: UNITED NATIONS DECADE OF INTERNATIONAL LAW (A/50/368 and Add.1 and 2)

1. Mr. CORELL (Under-Secretary-General for Legal Affairs, The Legal Counsel), introducing the report of the Secretary-General (A/50/368 and Add.1 and 2), said that 1995 had been a significant year for the international legal community. First, the celebration of the fiftieth anniversary of the United Nations had provided an opportunity to reaffirm the principle that international relations must be based on the rule of law. Secondly, that year marked the mid-point of the United Nations Decade of International Law, proclaimed by the General Assembly in its resolution 44/23 of 17 November 1989. Thirdly, in accordance with the programme of activities for the third term of the Decade (1995-1996), and as part of the fiftieth anniversary celebration, the United Nations Congress on Public International Law, a historic gathering of lawyers from all branches of international law, had been held at Headquarters from 13 to 17 March. The Secretariat was currently compiling the proceedings of the Congress, a job which had been left unfinished owing to the financial situation of the Organization.
2. The procedural information contained in chapter I of the report was followed by an analysis in chapter II of replies received from States and international organizations. The replies were summarized under five headings, corresponding to the five main sections into which the programme was divided. The full texts of the replies received, in the original language, were available for consultation in the Codification Division of the Office of Legal Affairs.
3. The activities undertaken were numerous and varied. However, since the report was based on a relatively limited number of replies, many initiatives had not been given the publicity they deserved. For example, the Foundation for the Development of International Law in Asia was publishing the Asian Yearbook of International Law, one editor of which was Mr. Christopher Pinto, former member of the International Law Commission.
4. Chapter III provided supplementary information on United Nations activities in the field of progressive development of international law and its codification, one of the main purposes of the Decade. In addition to eight specific areas, there were separate sections on the work of the International Law Commission, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and the Sixth Committee.
5. The question of what activities were to take place at the end of the Decade should be decided by the States Members of the United Nations. The Secretariat would provide support to activities decided upon by the General Assembly; however, in case such support was needed, it was important to notify the Secretariat in advance so that the necessary preparations could be made.
6. Mr. MAZILU (Romania) said that the current session of the General Assembly had witnessed a growing number of concrete activities designed to achieve the purposes of the Decade. One of the major achievements was the United Nations Congress on Public International Law, which had given participants an

opportunity to exchange views on the progressive development, codification and application of public international law, in theory and in practice.

7. Among the activities carried out by his country were the updating of its programmes of study in accordance with General Assembly recommendations and the organization of postgraduate courses and other relevant forms of training for young lawyers and diplomats. New institutions and associations had also been created, including the Romanian Institute for Human Rights, the Romanian Association for the United Nations and the Association for International Law and International Relations. Those organizations had sponsored many conferences, round tables and symposia. The Romanian Institute for Human Rights had also published many basic documents in that field.

8. As a member of the Organization for Security and Cooperation in Europe (OSCE), his Government had actively promoted the norms and principles of the Helsinki Final Act and all the other documents adopted by OSCE, among them the Treaty on Conventional Armed Forces in Europe and the Code of Conduct on Politico-Military Aspects of Security, adopted in December 1994, which established the principles and norms governing armed forces in democratic societies and relations between States, as well as relations between States and their nationals in the military field. The Code also underscored the determination of OSCE members to act as one if the Organization's norms or commitments were violated and to facilitate concerted responses to security challenges.

9. Discussions organized by the OSCE Office for Democratic Institutions and Human Rights had focused on the basic norms and principles relating to the rights and responsibilities of individuals, groups and organs of society with respect to the promotion and protection of universally recognized human rights and fundamental freedoms. An OSCE seminar on tolerance had been held in Bucharest in May and another, on tourism, had been held in November.

10. His Government was actively promoting the norms established under the Convention on the Rights of the Child and took the view that optional protocols were needed on the involvement of children in armed conflict and on child pornography.

11. It was essential to take more action in the field of youth education, in particular in relation to crime prevention and criminal justice. Despite the existence of important international instruments in that area, growing numbers of young people were involved in criminal activities such as illicit drug trafficking. His delegation therefore endorsed the proposal of the Commission on Crime Prevention and Criminal Justice to elaborate a convention on transnational crimes not covered by existing instruments and a convention against illicit trafficking in children.

12. As the main legal body of the General Assembly, the Sixth Committee should concentrate on increasing the efficiency of its codification activities; Romania was prepared actively to participate in the Working Group of the Whole on the Law of the non-navigational uses of international watercourses, in order to draw up an appropriate convention in that field as soon as possible. The Sixth

Committee should request broader dissemination of United Nations publications in the field of international law.

13. The United Nations Educational, Scientific and Cultural Organization (UNESCO) could and should do more in organizing education and training seminars and symposia in the area of international law, as well as publishing related United Nations documents and opinions.

14. The Sixth Committee, through its Working Group on the Decade, should continue to be a coordinating body, monitoring all activities related to the Decade, since successful implementation of its objectives would make a significant contribution to guaranteeing the primacy of the rule of law in relations among all States.

15. Mr. LAVROV (Russian Federation) said that, in consonance with the aim of the United Nations Decade of International Law, the statement by the President of the Russian Federation to the fiftieth session of the General Assembly had contained a proposal to hold a third international peace conference in 1999.

16. That proposal was prompted not only by the humanitarian traditions of Russian foreign policy (since it had been at the Russian Federation's initiative that the first and second peace conferences had been convened in 1899 and 1907), but also by the need to improve existing legal instruments and formulate new instruments which would allow the international community to meet the challenges of the twenty-first century. He was gratified that a number of countries and United Nations bodies had expressed their interest in the proposal, and considered that such a conference would contribute to improving "peace technology".

17. The conference might usefully consider such topics as establishing systems for settling conflicts, formulating standards for enforcing and maintaining peace, developing the legal foundations of international sanctions, bridging the gaps in international humanitarian law and establishing a universal criminal justice system. Such deliberations would not detract from the work undertaken by the United Nations and other international forums on those topics, but would lend extra impetus to areas requiring closer consideration.

18. The proposed conference might not only serve as a forum for adopting a declaration or other international legal instruments, but could contribute to formulating a new philosophy regarding the "new generation" conflicts and ways of dealing with them. It would also constitute an appropriate forum for celebrating the centenary of the first International Peace Conference, held in The Hague in 1899, and the conclusion of the United Nations Decade of International Law in 1999.

19. United Nations participation in preparing and holding the conference would not be merely of a symbolic nature; changes occurring in the world throughout the past 100 years demonstrated that the Organization could help to ensure that the results of such a conference would serve as point of reference in the quest for international justice and legality.

20. His delegation felt it would be useful to hold a series of meetings of national experts from Member States that had shown the most interest in the proposal, and was open to dialogue on the content, organization and holding of the third peace conference, including the question of level of representation. He would be grateful for any ideas on those issues from members of the Sixth Committee.

21. In the Russian Federation, the National Committee for the United Nations Decade of International Law was responsible for efforts to meet the goals and objectives of the Decade. The Committee functioned under the aegis of the Ministry of Foreign Affairs and was composed of prominent intellectuals and jurists, members of parliament and representatives of national legal institutions and of the business community. During the course of 1994, the Committee had organized a series of events with the participation of international law experts from various countries and planned to organize short-term international law courses for judges, attorneys, barristers and law-enforcement officials in early 1996 in Moscow. In late January and early February 1996, in collaboration with the International Committee of the Red Cross (ICRC), the National Committee would hold a seminar on issues relating to international humanitarian law and, in 1996-1999, it would organize conferences on topical issues of international law in St. Petersburg, Kazan and Moscow. In 1995, the Russian Federation had started publishing the Moscow International Law Review in English.

22. By decree of the President of the Russian Federation, a congress on legal reform would be held in February 1996. It would be attended by representatives of federal authorities, local authorities, political parties and other civic associations, as well as by the academic community.

23. Finally, he commended the activities of the Sixth Committee in implementing the programme of the third stage of the Decade and considered that the Working Group should continue to coordinate the programme.

The meeting rose at 11.10 a.m

UNITED NATIONS

General Assembly

FIFTIETH SESSION

Official Records

SIXTH COMMITTEE
39th meeting
held on
Wednesday, 15 November 1995
at 10 a.m.
New York

SUMMARY RECORD OF THE 39th MEETING

Chairman:

Mr. LEHMANN

(Denmark)

CONTENTS

AGENDA ITEM 140: UNITED NATIONS DECADE OF INTERNATIONAL LAW (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee

Distr. GENERAL
A/C.6/50/SR.39
18 December 1995
ENGLISH
ORIGINAL: SPANISH

95-82278 (E)



/...

The meeting was called to order at 10.30 a.m.

AGENDA ITEM 140: UNITED NATIONS DECADE OF INTERNATIONAL LAW (continued)
(A/50/368 and Add.1 and 2)

1. Ms. MAYADUNNE (Sri Lanka) said that many of the major problems facing the international community were due not to any lack of norms of international law, but to a failure to recognize those norms, the inadequacy of implementation mechanisms, and conflicts between the interests and policies of States. Consequently, the emphasis should be placed on prevention, and on the teaching of international law. Sri Lanka had established three training centres: the Bandaranaike Centre for International Studies, a Diplomatic Training Institute and a Centre for Human Rights in the University of Colombo. Numerous government and non-governmental initiatives had been taken to promote respect for international law in such areas as conflict resolution and, in particular, the international norms of humanitarian law in armed conflict.
2. The most important objective of the United Nations Decade of International Law was the promotion of means and methods for the peaceful settlement of international disputes. In that connection, Sri Lanka welcomed the activities that were being undertaken by the Permanent Court of Arbitration, referred to in document A/50/368, paragraph 35, and the steps that had been taken to modernize the optional rules for the arbitration of disputes between States, and between States and private companies; revise the conciliation rules; and develop uniform procedures for commissions of inquiry and disputes in which one party was an international organization. It also welcomed the establishment by the Steering Committee of the Financial Assistance Fund.
3. The lengthening role of cases before the International Court of Justice was an indication of the esteem in which the principal judicial organ of the United Nations was currently held, while the establishment of tribunals for the former Yugoslavia and Rwanda and the steps that were being taken to establish an international criminal court were indicative of a growing belief in the role that international law could play in reducing the incidence of serious crimes. In that respect, Sri Lanka supported the decisions adopted by the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders pertaining to international cooperation and the strengthening of the rule of law.
4. There were many less serious disputes which did not give rise to spectacular or horrific consequences, including disputes involving contractual dealings with private parties, which should not be submitted to the International Court of Justice. Greater use should therefore be made of other dispute settlement mechanisms such as arbitration, conciliation and the procedures available under The Hague Conventions of 1899 and 1907. Sri Lanka was aware that at a time of dwindling financial resources, it was better to strengthen existing mechanisms than to create new institutions. It therefore appreciated the efforts that were currently being made to revitalize and modernize the methods and procedures available under those Conventions, particularly since, in a sense, those Conventions had been the inspiration for

/...

the United Nations Decade of International Law. Sri Lanka urged all States to review the provisions of the Conventions. At all events, the second half of the Decade would have to focus on substantive legal issues.

5. Mr. THABETHE (South Africa) said that his Government - the Government of National Unity - attached great importance to the aims of the United Nations Decade of International Law, as was demonstrated by its acceptance of the principles of international law, reflected in the multilateral treaties to which it had become party, such as the Convention on the Rights of the Child, the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal, the Protocol on Environmental Protection to the Antarctic Treaty and the Convention on the International Maritime Organization. South Africa also attached great importance to international cooperation. At the regional level, it was promoting cooperation in the areas of trade, development and environmental protection under various bilateral and multilateral treaties. Furthermore, an increasing number of international organizations and United Nations agencies had opened offices in South Africa and were providing assistance in the implementation of international agreements. As to dispute settlement, the experience gained in the process of the negotiations leading to the April 1994 elections had enabled South Africa, along with Botswana and Zimbabwe, to play an important role in defusing the situation in Lesotho and restoring stability there. That experience had shown that preventive diplomacy was more effective and less costly than peace-keeping.

6. Democracy, sustainable development, social justice, environmental protection and the promotion of global peace and security were goals which could not be achieved unless disputes were settled by peaceful means and the proliferation of weapons of mass destruction was stopped. South Africa was therefore participating actively in non-proliferation regimes and suppliers' groups. Its participation in those groups, and in the African Group and the Non-Aligned Movement, aimed not only to promote non-proliferation but also to ensure that the controls envisaged did not impede access by developing countries to the technologies they required for their development needs. South Africa had enacted legislative provisions to create a legal framework for its action in the sphere of disarmament and non-proliferation.

7. South African universities were actively promoting study and research in international law and had participated in various international activities related to international law, some of which had been organized by the Centre for Human Rights. The new Constitution assigned an important role to international law. It recognized international customary law as part of South African law. That had led to a renewed interest in the subject, reflected in the organization of courses, conferences and seminars - including, for example, a meeting of government experts hosted by the South African Ministry of Justice to consider a draft protocol to the African Charter on Human and Peoples' Rights on the establishment of an African court on human and peoples' rights; a plethora of articles on the subject, many of which had been published in the South African Yearbook of International Law; references to international law in court proceedings; and the establishment of a South African branch of the International Law Association.

8. Mr. ALHADAD (Indonesia) reiterated his delegation's support for the goals of the Decade of International Law and recalled that the decade had been proclaimed on the initiative of the Movement of Non-Aligned Countries in response to the need to strengthen the rule of law against the backdrop of notable changes in the global political landscape. At present, there were more possibilities than ever for international cooperation in the service of world peace and stability. He therefore welcomed the opportunity provided by the fiftieth anniversary of the United Nations to determine how best to make use of the changes at the international level with a view to enhancing respect for the generally accepted norms and principles of international law, for which purpose collective and sustained efforts towards the development and codification of the law in the areas of disarmament, the peaceful settlement of regional conflicts, the protection of human rights and the promotion of development would be required.

9. Indonesia, which had always sought to contribute to such efforts, felt that the United Nations was the principal instrument for the peaceful settlement of conflicts through dialogue and cooperation. For that reason, his delegation felt that the various United Nations organs should be strengthened as negotiating forums. There was no doubt that international law had a key role to play in the search for solutions to the problems of an interdependent world in which economic, social and ecological issues had assumed paramount importance, and Indonesia was therefore committed to working towards the codification of that law. Securing effective methods for the enforcement of international law should be one of the principal goals of the Decade. The achievement of that goal would require a better knowledge of international legal norms on a global basis. Moreover, new ways must be found to enhance respect for the application of, and the obligations imposed by, international legal precepts. His delegation had thus welcomed the successful convening of the United Nations Congress on Public International Law in 1995. Indonesia was aware that the dissemination of international law facilitated the participation of States, particularly developing States, in treaty making and the development of the law. His delegation therefore expressed its appreciation to the International Committee of the Red Cross (ICRC) for its promotion of international humanitarian law.

10. The unanimous support of Member States for the Decade of International Law was proof that they attached great importance to the rule of law and to its progressive development and codification, and there was no doubt that the Sixth Committee, the International Law Commission and other international organizations had made major strides in that area, as witnessed by the important instruments that had been prepared under United Nations auspices. Particularly welcome in that regard was the entry into force of the United Nations Convention on the Law of the Sea and the establishment of the International Sea-Bed Authority. The eve of the twenty-first century was an appropriate time to accelerate the work of codification and promotion of international law in order to bring about a stable world of peace, equity, justice and harmony for all peoples.

11. Mr. BOUVIER (Observer for the International Committee of the Red Cross (ICRC)) recalled that ICRC had always supported the United Nations Decade of International Law, the goals of which coincided with ICRC activities for the

promotion and dissemination of, and respect for, international humanitarian law. While it was crucial to provide material assistance to the victims in cases of armed conflict, a respect for applicable law was essential to the alleviation of their suffering.

12. Speaking of the intergovernmental meeting of experts on practical means of promoting full respect for and compliance with international humanitarian law, mentioned in General Assembly resolution 49/50 of 9 December 1994, he said that the resolution had expressed approval of various recommendations intended to improve the knowledge, acceptance and application of that law. To that end, ICRC had just set up a system of advisory services at its headquarters and regional offices. With respect to the report to be prepared on the customary norms of international humanitarian law applicable to international and non-international armed conflicts, he felt that greater emphasis should be given to non-international conflicts since the law applicable to armed conflict in non-international situations was not well developed. Moreover, the establishment of customary norms would assist ICRC in preparing a model military manual on the law applicable to international and non-international armed conflicts. Furthermore, the preparation of the manual, whose adoption by States would be urged at a meeting to be held in 1997, would make it possible for ICRC to consider the possibility of incorporating into it revised guidelines on the protection of the environment in times of armed conflict.

13. He also stressed the fact that the effective application of international law, and genuine resistance to the violation of its provisions, could be achieved only if States fulfilled the commitments which they had undertaken in that regard, one of which was to respect, and to compel respect for, the provisions of international humanitarian law. That entailed acting, jointly or individually, in cooperation with the United Nations in cases of serious violations of that law and taking the necessary steps to punish such violations. Furthermore, the depositary of the Geneva Conventions should organize periodic meetings of the States parties to consider the general problems raised by the application of the Conventions in order to enhance respect for international humanitarian law.

14. Lastly, he said that the results of the upcoming twenty-sixth International Conference of the Red Cross and Red Crescent in Geneva would certainly be reflected in future activities related to the Decade.

The meeting rose at 11:10 a.m.

UNITED NATIONS
General Assembly
FIFTIETH SESSION
Official Records

SIXTH COMMITTEE
40th meeting
held on
Thursday, 16 November 1995
at 10 a.m.
New York

SUMMARY RECORD OF THE 40th MEETING

Chairman:

Mr. LEHMANN

(Denmark)

CONTENTS

AGENDA ITEM 140: UNITED NATIONS DECADE OF INTERNATIONAL LAW (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/50/SR.40
20 December 1995
ENGLISH
ORIGINAL: SPANISH

95-82326 (E)



/...

The meeting was called to order at 10.25 a.m.

AGENDA ITEM 140: UNITED NATIONS DECADE OF INTERNATIONAL LAW (continued)
(A/50/368 and Add.1 and 2)

1. Mr. RODRIGUEZ LANUZA (Nicaragua), speaking on behalf of Costa Rica, El Salvador, Guatemala, Honduras, Panama and his own delegation, said that the programme of activities of the United Nations Decade of International Law was consonant with the legal principles applied in the region, which had adopted a number of measures which were closely connected with the subject.
2. The establishment of the Central American Integration System (SICA) by the Tegucigalpa Protocol and the operation of SICA were also closely linked with the Decade in that the objective of SICA was to promote the progressive development of international law at the regional level. For that reason, it was gratifying that SICA had been admitted to the General Assembly as an observer at the current session.
3. In 1994, the Central American Court of Justice had been established as the main, permanent judicial body of SICA; the Court's verdicts had binding legal value for the solution of regional conflicts which arose both between States and between individuals or legal entities in the region and Governments or SICA bodies. The Court preserved and enhanced the principles of its predecessor, the Cartago Court, established in 1907, which had been the first international court to which individuals had had access against the State.
4. Within the framework of SICA, Nicaragua had proposed to the other countries of the region that a democratic security treaty for Central America should be signed, which would include various legal topics of regional and international scope, some of which had been taken from the programme for the Decade. At the same time, at the Guatemala Summit, held in 1994, the Central American Presidents, with the participation of the University for Peace, had decided to approve a programme on the culture of peace and democracy in Central America in order to promote, in the civil society of the region, knowledge of the rules, norms and procedures related to human rights and the peaceful settlement of disputes and to maintain Central America as a region of peace, democracy, freedom and development.
5. In order to promote acceptance of and respect for the principles of international law, the region had progressed in an integrated manner in signing and ratifying international instruments on various subjects. For example, in the area of the environment, the convention establishing the Central American Commission on Environment and Development, an agreement regulating the transboundary movement of hazardous wastes at the Central American level, a regional convention on biological diversity, a convention on climate change, the Volcán Masaya Declaration, a regional convention on the management and conservation of natural forest ecosystems and the development of forest plantations and the agreement establishing the Centre for the Coordination of the Prevention of Natural Disasters in Central America (CEPREDENAC) had been signed. In addition, the Central American countries had joined in the plan of action of the Convention for the Protection of the Marine Environment and

Coastal Area of the South-East Pacific. For its part, the Central American Court of Justice had initiated its activities with the participation of three countries.

6. With regard to combating drug trafficking, a regional cooperation agreement for the eradication of illicit drug trafficking and the agreement establishing the Permanent Central American Commission for the Eradication of the Production, Consumption, and Illicit Use of Drugs and Psychotropic Substances had been signed. With respect to legislation, the LEGISMAR project should be noted; its purpose was to establish uniform legislation for Central American maritime transport. In the area of intellectual property, the region had progressed in a coordinated manner within the framework of the Central American convention on the subject and had taken steps to accede to the Berne and Paris conventions. Lastly, in the sphere of international criminal law, a treaty for mutual legal assistance in criminal matters had been signed, and was currently being ratified in the Central American parliaments.

7. He drew attention to the judgment issued recently by the International Court of Justice in the border dispute between El Salvador and Honduras in which, for the first time, the Court had applied Article 62 of the Statute, allowing the intervention of a third country, specifically Nicaragua. On the fiftieth anniversary of the United Nations, Nicaragua had established a Nicaraguan committee for the United Nations Decade of International Law which planned to carry out various activities linked with the programme for the Decade.

8. His Government welcomed the proposal by the Russian Federation to convene a third international conference for peace which would coincide with the centenary of the Hague peace agreements.

9. Mr. BASNET (Nepal) said that efforts for development would be successful only if they were based on the rule of law; that was the objective of the United Nations Decade of International Law.

10. At the mid-point of the Decade, there were signs of increasing international cooperation based on mutual recognition of the rights and obligations of States. In the view of his delegation, that was the contribution made by the Decade to the progressive development of international law. However, there was no point in codifying international norms unless they were scrupulously observed and put into practice.

11. Nepal had consistently supported the promotion of the norms and principles of international law and their progressive development and codification. Respect for and promotion of human rights occupied a central place in the policy of his Government; it was a party to 14 human rights instruments, which were being translated into the national language with a view to their wider dissemination.

12. His delegation welcomed the initiatives of the Commission on Crime Prevention and Criminal Justice regarding the elaboration of a convention on transnational crimes not covered by existing international instruments and a convention against illicit trafficking in children. Although it recognized that

the prevention of crime and promotion of the rule of law were the focus of the Decade, it believed that the principle pacta sunt servanda must be strictly observed.

13. Nepal attached great importance to international humanitarian law and welcomed the work of the International Committee of the Red Cross in disseminating information. His delegation strongly condemned illicit traffic in cultural property and supported punitive measures against illicit traffickers and the payment of compensation for the damage caused; it expressed appreciation to the United Nations Educational, Scientific and Cultural Organization (UNESCO) for publishing and disseminating the Convention for the Protection of Cultural Property in the event of armed conflict and its protocols.

14. One of the major achievements of the Decade had been the convening of the United Nations Congress on Public International Law; his delegation urged wide dissemination of the proceedings of the Congress.

15. His delegation expressed appreciation for the work carried out by the Asian-African Legal Consultative Committee, and commended the work done by the United Nations International Drug Control Programme in compiling and publishing national drug control laws and regulations. In the view of his delegation, cooperation and coordination among members of the international community should be enhanced in order to reduce the demand for drugs through programmes for the education, treatment, rehabilitation and social reintegration of drug addicts and the control of supply through suppression, crop substitution and the effective enforcement of drug-related laws.

16. Mr. CHANG (Republic of Korea) said that the United Nations Congress on Public International Law, held in March 1995, had been a useful opportunity to consider the codification, progressive development and dissemination of public international law. The growing trend in the United Nations and other international forums to enhance the role of international law was encouraging.

17. Referring to the extensive codification activities of the International Law Commission, he said that his delegation hoped that the Commission would conclude its work on other draft international conventions in the near future.

18. Given the lack of a legislative organ at the international level, the only practical alternative to secure the universality of international law was to advocate wider acceptance of key multilateral treaties by the international community. For that reason, his delegation welcomed General Assembly resolution 49/50 in which Member States were invited to become parties to existing multilateral treaties.

19. The Republic of Korea, which was participating actively in the codification of the principles of international law, was currently taking the necessary domestic measures to ratify and implement the United Nations Convention on the Law of the Sea. In respect of the peaceful uses of Antarctica, the Republic of Korea had signed the Protocol on Environmental Protection to the Antarctic Treaty.

20. His Government had a keen interest in the development of air and outer space law, and had been active in building a framework for the global environmental regime which was emerging as a new dimension of international law. His country was committed to protecting and promoting human rights; it had become a party to the major international human rights instruments and was carrying out various activities to champion human rights law in all sectors of society.

21. In addition to the initiatives undertaken by the Government, the Korean Association of International Law, with the support of many other national associations, was involved in the teaching, researching and dissemination of the principles of international law.

22. His Government supported the activities of the United Nations in achieving the aims of the United Nations Decade of International Law, and has committed to participating fully in those activities.

23. Mr. PANTIRU (Republic of Moldova) said that in the preceding years the United Nations had contributed greatly to the progressive development of international law, although further work was necessary. The United Nations Congress on Public International Law held in March 1995 had constituted a unique opportunity to consider and evaluate innovative ways and means of ensuring the world-wide promotion and implementation of the objectives of the United Nations Decade of International Law.

24. Since one of the objectives of the Decade was the promotion of means and methods for the peaceful settlement of disputes between States, it should be recalled that, in an attempt to systematize the causes of disputes, one of the participants in the United Nations Congress on Public International Law had emphasized the struggles between groups within a State. In addition, in his report entitled "An Agenda for Peace", the Secretary-General had referred to the dangers of nationalism; and in the supplement to "An Agenda for Peace", he had pointed out the importance of conflict-prevention mechanisms. The Republic of Moldova therefore welcomed the continuation of discussions in that area, which would help to strengthen the principle of the peaceful settlement of disputes, in accordance with the objectives of the United Nations Decade of International Law.

25. In order to achieve genuine implementation of the principle of peaceful settlement of disputes, the latter should be defined clearly to avoid, for example, confusing political conflicts with inter-ethnic conflicts. There was also a need to define clearly the concept of internal conflict. The United Nations could use the distinction made by the Organization for Security and Cooperation in Europe (OSCE) between the types of conflict which were occurring in the Balkan region. That approach had provided the basis for the OSCE position in relation to the complex conflicts in the Republic of Moldova.

26. The United Nations and OSCE had real opportunities for resolving regional conflicts, including internal ones. Their participation in efforts to settle a particular conflict by peaceful means also had the advantage of impartiality. In any case, States too could contribute to a just and durable settlement of disputes and conflicts when they were truly committed to the cause of peace and

acted impartially. Otherwise, their "good offices" could bring about results contrary to the re-establishment of a normal state of affairs, based on the norms of international law and the principles of the Charter of the United Nations.

27. The illegal presence of foreign military forces in the territory of another State was a source of insecurity and instability and any interference by those troops in internal conflicts or in the internal affairs of a sovereign and independent country not only constituted a serious violation of international law but also represented a major obstacle to the peaceful settlement of conflicts. Only the concerted action of international bodies, especially OSCE and the United Nations, could contribute effectively to re-establishing peace and security in the Balkan region and protecting the territorial integrity and independence of the Republic of Moldova. The time had come for the international community to take steps to establish procedures for the peaceful settlement of those new types of conflict. His Government welcomed the Russian Federation's initiative concerning the holding of a third international peace conference.

28. The emergence of new patterns of cooperation among States as a result of the end of the cold war had created better conditions for the progressive development of international law, and its codification. At the Special Commemorative Meeting of the General Assembly on the occasion of the fiftieth anniversary of the United Nations, the President of his country had stated that the need to establish a new legal framework for the post-cold-war period was becoming more and more evident, and that it would be useful to define more precisely some of the existing concepts of international law. With that in mind, his Government intended to convene, in Chişinău, an international conference dedicated to the question of separatism. The conference would improve understanding of that phenomenon and help to identify methods for combating it within the framework of international legal instruments.

29. Concerning another of the objectives of the Decade, namely encouraging the teaching, study, dissemination, and greater appreciation of international law, the law faculty curriculum in his country included international law, and it was even possible to specialize in international law and international economic relations. His Government reiterated that it was interested in receiving fellowships to enable young lawyers to deepen their knowledge of international law and acquire experience in the legal work of the United Nations and its specialized agencies. It was especially interested in fellowships from the United Nations Institute for Training and Research (UNITAR) for attendance at specialized seminars in international law.

30. Mr. CAMACHO (Ecuador) said that the Secretary-General's report on the United Nations Decade of International Law (A/50/368) provided an overview of the significant progress already made as a result of the work undertaken by Member States, and United Nations bodies, by various intergovernmental and non-governmental organizations and by the international tribunals. He drew attention to the work being done by the United Nations International Drug Control Programme (UNDCP) and the United Nations Environment Programme (UNEP) to promote the acceptance of multilateral treaties and conventions related to their respective spheres of interest.

31. His Government, which considered protection of the environment to be of the highest importance, welcomed the organization of training programmes on environmental law and policy which were being organized jointly by UNITAR, the United Nations Centre for Human Settlements (Habitat) and UNEP. In addition, the work of the International Committee of the Red Cross (ICRC) to help States implement and disseminate international humanitarian law was worthy of mention.

32. He took a special interest in programmes relating to the teaching, study, dissemination and greater appreciation of international law organized within the framework of the United Nations Decade of International Law by various United Nations bodies and by UNITAR in particular.

33. With regard to another of the objectives of the Decade, namely, encouragement to the progressive development of international law and its codification, the Commission on Human Rights was carrying out important work on the draft declaration on the rights and responsibilities of individuals, groups and institutions to promote and protect universally recognized human rights and fundamental freedoms; it was also working on a declaration on the rights of indigenous peoples. In the area of the law relating to international trade, the United Nations Commission on International Trade Law (UNCITRAL) had adopted at its twenty-eighth session a draft convention on independent guarantees and stand-by letters of credit.

34. The most prominent event in 1995 related to the Decade had been the United Nations Congress on Public International Law. The Congress had achieved its main goal, which was to highlight the importance of international law as a system of international coexistence based on respect for the law and the effective promotion and protection of human rights and democracy.

35. As far as the activities for the rest of the Decade were concerned, his Government welcomed the initiative of the President of the Russian Federation concerning the convening of a third international peace conference in 1999.

36. Mr. BAXTER (Australia) said that 1995 had been a very important year for international humanitarian law. His country had participated in the meeting of the intergovernmental group of experts for the protection of war victims, and in the review of the 1980 Inhumane Weapons Convention. It looked forward to contributing to the 26th International Conference of the Red Cross and Red Crescent, which would take place in December 1995.

37. The changing nature of armed conflict, more often occurring at a non-international level and involving deliberate attacks on the civilian population, hindered the implementation of the traditional rules and principles of international humanitarian law. It was therefore essential to establish rules during the Decade to regulate armed conflict. The Decade's objective of promoting the acceptance of and respect for the principles of international law and encouraging its dissemination were crucial for the continued relevance of international humanitarian law in the current changing world. The increase in armed conflict during the 1990s was another, tragic reason for the international community to focus during the Decade on developing as far as possible the law of armed conflict. His country had committed itself totally to developing and strengthening international humanitarian law; to that end, it had hosted the

Second Regional Conference on International Humanitarian Law in December 1994. More than 160 representatives of governmental and non-governmental bodies, including the Red Cross and Red Crescent, had taken part in the Conference. Taking as a reference the final declaration of the International Conference for the Protection of War Victims, the Regional Conference had explored the fundamental issues in the field of international humanitarian law, such as enforcement, peace-keeping, peacemaking, the problems of sexual violence and crimes against women and children during armed conflict, the protection of cultural property and the use of land-mines. The Conference had offered a forum for dialogue on the most pressing issues of international humanitarian law. Moreover, it had allowed discussions to take place on national problems relating to the implementation and dissemination of international humanitarian law and attempts had been made to develop solutions in the regional context. Furthermore, the Conference had raised awareness of the interrelationship between issues of international humanitarian law and general international law, and had encouraged the establishment of a strong regional base for contributions to revitalizing international humanitarian law.

38. The Australian Red Cross Society had recently sponsored the establishment of a chair in international humanitarian law at the University of Melbourne, which would be only the third of its kind in the world (the other two were in Germany and the Netherlands). That chair would help to promote a wider understanding of international humanitarian law at the national, regional and international levels.

39. Much remained to be done to ensure that the laws of armed conflict were observed. Noteworthy in that respect was the work done by the International Committee of the Red Cross and other bodies on the protection of the environment in times of armed conflict.

40. In the past few years, there had been a significant increase in the interest shown by the Australian public in the impact of treaties in many areas, which had led to calls for more information about them to be made available. The Secretariat was therefore to be commended for its work on making available in electronic form international law materials, and treaty materials in particular.

41. Mr. SÁNCHEZ (Spain), speaking on behalf of the European Union, said he shared and supported the aims of the United Nations Decade for International Law described in paragraph 2 of General Assembly resolution 44/23: to promote acceptance of and respect for the principles of international law; to promote means and methods for the peaceful settlement of disputes between States; to encourage the progressive development of international law and its codification; and to encourage the teaching, study, dissemination and wider appreciation of international law. The European Union noted with special interest the contributions made in that respect by several international organizations and bodies, such as ICRC for its work on the protection of the environment in times of armed conflict, and the Permanent Court of Arbitration and OSCE, which had reported on initiatives to promote the peaceful settlement of disputes.

42. With regard to the activities undertaken in the framework of the Decade in the field of the teaching, study, dissemination and wider appreciation of

international law, the United Nations Congress on Public International Law held in March 1995 should be singled out. The Congress had served as a forum for the exchange of opinions, and the convening of round tables for more in-depth discussions had been particularly valuable, as it had allowed informal meetings to take place in which a large number of speakers had been able to participate. The academic focus of the statements had guaranteed sufficient independence from the work of United Nations bodies.

43. The European Union welcomed the efforts of the Secretariat and, in particular, the Treaty Section of the Office of Legal Affairs, to make the United Nations collection of treaties available in an electronic database. Also notable were the measures being taken to allow direct access for Member States and to make the collection of multilateral treaties deposited with the Secretary-General on the Internet by the end of November 1995.

44. The Russian Federation had presented a proposal in the framework of the Decade to commemorate the centenary of the First International Peace Conference, held in The Hague in 1899. The European Union considered that the question of how best to commemorate that anniversary merited further consideration.

45. Mr. BENADAVA (Chile) said that one of the foundations of Chile's foreign policy was respect for international law, the peaceful settlement of international conflicts and prevention of them by dialogue and negotiation. Therefore it had offered its enthusiastic support to activities within the framework of the Decade.

46. His Government was studying with interest the initiatives to convene a third peace conference in 1999. One of the basic subjects of that conference should be the development of a modern system for the prevention and settlement of international disputes. Interested States should lose no time in appointing groups of experts to present to their respective Governments ideas and proposals for the organization of the conference and the items to be included in its agenda. At a later stage, those groups could exchange ideas with the aim of defining common and alternative preliminary positions on various aspects of the conference.

47. Chile had followed the activities of the International Committee of the Red Cross (ICRC) with great interest, including the establishment of an advisory services structure. It was to be hoped that the Committee's forthcoming Conference would adopt the recommendations to be submitted to it by the group of intergovernmental experts and that ICRC would prepare a report on customary rules applicable to armed conflicts. With the Government's support, the International Committee of the Red Cross had organized a number of courses and seminars in Chile on aspects of international humanitarian law, intended primarily for university students and members of the armed forces and police institutions. One week previously, the Chilean Government had signed an agreement with ICRC regarding its contribution to ICRC's humanitarian activities.

48. His delegation was pleased to note that several international organizations continued to publish their international practice and offer advisory services to Governments in their respective areas of expertise.

49. He also drew attention to the efforts of the International Bureau of the Permanent Court of Arbitration to revitalize its activities and provide the international community with modern instruments for the settlement of disputes.

50. Ms. WILLSON (United States of America) said that the activities connected with the Decade had heightened awareness of the importance of international law. Including an item on the Decade in the General Assembly agenda provided a platform for States to share ideas on ways and means of developing international law and increasing appreciation of its value. That was certainly a major contribution of the United Nations Congress on Public International Law, which had been organized by the Secretariat with its usual professionalism and efficiency and had served as a forum for formal presentations and informal exchanges of ideas in various areas.

51. The programme for the Decade served, among other things, as a structure for the work of private organizations in the field of international law. In 1995, the American Society of International Law had published a brochure on its activities and, in the introduction, mention was made of the Society's support for the aims of the Decade set out in General Assembly resolution 44/23. Publicizing the work of the United Nations, by private organizations, could have a significant impact if it was done by such groups in all 185 Member States. In addition to its annual meeting and co-sponsorship of an international law weekend, the Society, through its Outreach Project to Promote the Rule of Law in World Affairs, sponsored briefings by prominent speakers, targeted at high-level officials in Washington, D.C. It had also co-sponsored a seminar for judges on the role of international law in United States courts. To foster wider dissemination of international law, the Society distributed its Journal in countries in Eastern Europe, the former Soviet Union and sub-Saharan Africa. The American Society of International Law had almost completed a series of 10 30-minute videos on subjects including the nature and sources of international law, the role of States, the law of treaties, human rights, international organizations, the use of force, international dispute settlement and international criminal law. Such audio-visual aids could be of great importance in bringing international law to wider segments of the international community. The United Nations production "International Law: Our Common Language", which had been shown during the Congress, was another commendable example.

52. Her delegation was pleased to note the progress achieved by the United Nations in computerization, and particularly that the United Nations Treaty Series would become available on-line.

53. Since 1992, the United States Agency for International Development, in coordination with the Department of State, had been operating the Rule of Law Program for Eastern Europe and the Newly Independent States pursuant to the Freedom Support Act. Under the Rule of Law Programme, the United States Government provided funding for projects to assist those States in developing and implementing their national laws in such areas as criminal justice, law enforcement, environmental protection and human rights. The Programme had also offered grants to Governments (for instance, Georgia) and non-governmental organizations so that they could be linked to the Internet.

54. The American Society of International Law had undertaken a project, funded by the Ford Foundation, to create an international law communications network. The objective was to identify the units of the network, understand how they functioned, assess their role in the network and determine what kind of electronic link, if any, would best support the network.

55. The Secretary-General's reports on the Decade (A/50/368 and Add.1 and 2) and on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law (A/50/726) had been valuable for purposes of dissemination and broader appreciation of international law.

56. Taking advantage of the similarities between agenda items 139 and 140, she expressed her appreciation for the wide range of activities that had been undertaken in implementation of the Programme of Assistance during the biennium 1994-1995 and those to be conducted during the biennium 1996-1997. From the outset, her delegation had maintained that the goal of the Decade should be to promote the aims of the Programme of Assistance. To a large extent, the activities of the first half of the Decade had validated that view. The challenge for the remainder of the Decade would be to make maximum use of the possibilities offered by the information age.

57. Mr. AYEWAH (Nigeria) said that his delegation had supported the proclamation of the United Nations Decade for International Law because it believed that peace and harmony among nations and peoples could best be achieved through mutual respect for sovereignty and promotion of the rule of law in international relations. The duty of the international community was to promote understanding of the United Nations and to highlight the need to reaffirm the Organization's purposes and principles.

58. In the area of the peaceful settlement of disputes, strengthening the authority of the International Court of Justice was of paramount importance. Accordingly, States should accept the compulsory jurisdiction clause and contribute to the Trust Fund that had been set up to assist States in the settlement of disputes through the International Court of Justice. He hoped that the Summaries of the Judgments, Advisory Opinions and Orders of the International Court of Justice (ST/LEG/SER.F/1) could be regularly updated. Sufficient instruments existed for the peaceful settlement of disputes, but practical means should be found to encourage States to use them voluntarily and to comply more fully with their obligations under international law.

59. His delegation welcomed the convening of the United Nations Congress on Public International Law, which had attracted over 1,500 specialists from over 150 countries. It was to be hoped that the Secretariat would complete compilation of the proceedings of the Congress as soon as possible and make them widely available at affordable cost, particularly in developing countries, where there was a dearth of such materials.

60. In order to maintain the momentum generated by the United Nations Decade for International Law, a third international peace conference should be held, to coincide with the one hundredth anniversary of the first International Peace Conference which had been held at The Hague in 1899.

The meeting rose at 11.55 a.m.